

VIRGINIA ACTS OF ASSEMBLY -- 1998 SESSION

CHAPTER 407

An Act to amend and reenact §§ 51.1-155, 51.1-162, and 51.1-207 of the Code of Virginia, relating to administration of retirement benefits.

[H 347]

Approved April 12, 1998

Be it enacted by the General Assembly of Virginia:

1. That §§ 51.1-155, 51.1-162, and 51.1-207 of the Code of Virginia are amended and reenacted as follows:

§ 51.1-155. Service retirement allowance.

A. Retirement allowance. A member shall receive an annual retirement allowance, payable for life, as follows:

1. Normal retirement. The allowance shall equal 1.50 percent of the first \$13,200 of average final compensation plus 1.65 percent of average final compensation in excess of \$13,200, multiplied by the amount of creditable service. If the member is credited with thirty-five or more years of service, he shall receive 1.65 percent of his average final compensation multiplied by the amount of his creditable service.

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

2. Early retirement; applicable to teachers, state employees, and certain others. The allowance shall be determined in the same manner as for normal retirement with creditable service and average final compensation being determined as of the date of actual retirement. If the member has less than thirty years of service at retirement, the amount of the retirement allowance shall be reduced on an actuarial equivalent basis for the period by which the actual retirement date precedes the earlier of (i) his normal retirement date or (ii) the first date on which he would have completed a total of thirty years of creditable service. The provisions of this subdivision shall apply to teachers and state employees. These provisions shall also apply to employees of any political subdivision that participates in the retirement system if the political subdivision makes the election provided in subdivision 3 of this subsection.

3. Early retirement; applicable to employees of certain political subdivisions. The allowance shall be determined in the same manner as for normal retirement with creditable service and average final compensation being determined as of the date of actual retirement. If the creditable service of the member equals thirty or more years but the sum of his age at retirement plus his creditable service at retirement is less than ninety, the amount of the retirement allowance shall be reduced on an actuarial equivalent basis for the period by which the actual retirement date precedes the earlier of (i) his normal retirement date or (ii) the first date on which the sum of his then attained age plus his then creditable service would have been equal to ninety or more had he remained in service until such date. If the member has less than thirty years of creditable service, the retirement allowance shall be reduced for the period by which the actual retirement date precedes the earlier of (i) his normal retirement date or (ii) the first date on which he would have completed a total of at least thirty years of creditable service and his then creditable service plus his then attained age would have been equal to ninety or more.

The provisions of this subdivision shall apply to the employees of any political subdivision that participates in the retirement system. The participating political subdivision may, however, elect to provide its employees with the early retirement allowance set forth in subdivision 2 of this subsection. Any election pursuant to this subdivision shall be set forth in a legally adopted resolution.

4. Additional allowance. In addition to the allowance payable under subdivisions 1, 2, and 3 of this subsection, a member shall receive an additional allowance which shall be the actuarial equivalent, for his attained age at the time of retirement, of the excess of his accumulated contributions transferred from the abolished system to the retirement system, including interest credited at the rate of two percent compounded annually since the transfer to the date of retirement, over the annual amounts equal to four percent of his annual creditable compensation at the date of abolishment for a period equal to his period of membership in the abolished system.

5. 50/10 retirement. The allowance shall be payable in a monthly stream of payments equal to the greater of (i) the actuarial equivalent of the benefit the member would have received had he terminated

service and deferred retirement to age fifty-five or (ii) the actuarially calculated present value of the member's accumulated contributions, including accrued interest.

B. Beneficiary serving in position covered by this title. If a beneficiary of a service retirement allowance under this chapter, other than a member of the General Assembly, is at any time in service as an employee in a position covered for retirement purposes under the provisions of this or any chapter other than Chapter 7 (§ 51.1-700 et seq.) of this title, his retirement allowance shall cease while so employed. *Any member who retires and later returns to covered employment shall not be entitled to select a different retirement option for a subsequent retirement.*

§ 51.1-162. Death before retirement.

A. 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 ~~with~~ *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 ~~with~~ *in a manner prescribed by* the Board. If the death of the designated person occurs prior to the death of the member and another designation has not been made, payment shall be made to the executors or administrators of the estate of the member.

If no designation has 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.

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 the persons qualifying in the order of precedence. This amount shall be reduced by the amount of any retirement allowance previously received by the member under this chapter or the abolished system.

B. If a member dies in service and if no benefits are payable under subsection C of this section, a retirement allowance shall be paid to the person designated as provided in subsection A of this section if the person is the (i) surviving spouse, (ii) minor child, (iii) *wholly dependent* mother, or (iv) *wholly dependent* father of the member. *If no designation has been made, a retirement allowance shall be paid in the following order of precedence to the (i) surviving spouse, (ii) minor child, (iii) wholly dependent mother, or (iv) wholly dependent father of the member.* The retirement allowance shall be paid to the first person qualifying in the ~~order~~ *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. 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. If a member dies prior to attaining his sixty-fifth birthday, the allowance shall equal one-half of the retirement allowance that would have been payable to the member had the member retired for early service retirement on the date of his death and elected to have his allowance payable under the joint and last-survivor option so that one-half thereof would be continued to such person after the member's death. In the case of a member who had not attained his fifty-fifth birthday at his date of death, it shall be assumed that the member's age at his date of death is fifty-five for the purpose of reducing the benefit on an actuarial equivalent basis. If a member dies after attaining his sixty-fifth birthday, the allowance shall equal the decreased retirement allowance that would have been payable to the member had the member retired at his normal retirement age on the date of his death and elected to have his allowance payable under the joint and last-survivor option so that the same amount would be continued to such person after the member's 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 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 or remarries, 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 shall be paid to the member's parents wholly dependent upon him for support, divided in a manner determined by the Board, during the lives of the parents.

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.

§ 51.1-207. Death before retirement.

A. 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 ~~with~~ *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 ~~with~~ *in a manner prescribed by the Board*. If the death of the designated person occurs prior to the death of the member and another designation has not been made, payment shall be made to the executors or administrators of the estate of the member.

If no designation has 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.

If a member dies at any time 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 the persons qualifying in the order of precedence. This amount shall be reduced by the amount of any retirement allowance previously received by the member.

B. If a member dies in service and if no benefits are payable under subsection C, a retirement allowance shall be paid to the person designated as provided in subsection A of this section if the person is the (i) surviving spouse, (ii) minor child, (iii) *wholly dependent* mother, or (iv) *wholly dependent* father of the member. *If no designation has been made, a retirement allowance shall be paid in the following order of precedence to the (i) surviving spouse, (ii) minor child, (iii) wholly dependent mother, or (iv) wholly dependent father of the member.* The retirement allowance shall be paid to the first person qualifying in the ~~order~~ *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. 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 allowance shall equal one-half of the retirement allowance that would have been payable to the member had the member retired for early service retirement on the date of his death and elected to have his allowance payable under the joint and last-survivor option so that one-half thereof would be continued to such person after the member's death. In the case of a member who had not attained his fiftieth birthday at his date of death, it shall be assumed that the member's age at his date of death is fifty for the purpose of reducing the benefit on an actuarial equivalent basis. If a member dies after attaining his sixtieth birthday, the allowance shall equal the decreased retirement allowance that would have been payable to the member had the member retired at his normal retirement age on the date of his death and elected to have his allowance payable under the joint and last-survivor option so that the same amount would be continued to such person after the member's 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 subsection B of § 51.1-206 shall not apply. If the person elects in writing under seal and duly acknowledged, the amount of the member's accumulated contributions shall be paid to the person 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.

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 or remarries, 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 shall be paid to the member's parents wholly dependent upon him for support, divided in a manner determined by the Board, during the lives of the parents.

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, shall equal 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.