

VIRGINIA ACTS OF ASSEMBLY -- 2003 SESSION

CHAPTER 624

An Act to amend and reenact §§ 51.1-138, 51.1-202, 51.1-205, and 51.1-206 of the Code of Virginia, relating to the retirement allowances of state police officers and certain local law-enforcement officers.

[S 812]

Approved March 18, 2003

Be it enacted by the General Assembly of Virginia:

1. That §§ 51.1-138, 51.1-202, 51.1-205, and 51.1-206 of the Code of Virginia are amended and reenacted as follows:

§ 51.1-138. Benefits.

A. Employees who become members under this article and on whose behalf contributions are paid as provided in this article shall be entitled to benefits under the retirement system.

B. By resolution legally adopted and approved by the Board, the employer may elect to provide benefits equivalent to those provided under the State Police Officers' Retirement System, as set out in Chapter 2 (§ 51.1-200 et seq.) of this title, except for *benefits provided under § 51.1-209 and except for those provisions allowing a person retired under the State Police Officers' Retirement System to receive the related retirement allowance while employed as a state police officer or as an employee, as defined in § 51.1-124.3, of the Department of State Police*, in lieu of the benefits that would otherwise be provided hereunder for any employees who are employed in (i) law-enforcement positions comparably hazardous to that of a state police officer, including any sworn law-enforcement officer who has the duty and obligation to enforce the penal and traffic laws of this Commonwealth as directed by his superior officer, if so certified by his appointing authority, (ii) positions as full-time salaried fire fighters, or (iii) positions as regional jail superintendents and jail officers of regional jail farms, regional jails or jail authorities, as approved by the respective jail board or authority and by the participating political subdivisions of such entities. Sheriffs of political subdivisions ~~which~~ *that* participate in the retirement system shall receive benefits equivalent to those of state police officers, except for the benefits provided under § 51.1-209 *and except for those provisions allowing a person retired under the State Police Officers' Retirement System to receive the related retirement allowance while employed as a state police officer or as an employee, as defined in § 51.1-124.3, of the Department of State Police*, regardless of whether the employer has elected to provide equivalent benefits as set out in this subsection.

C. Each employer providing the benefits of subsection B for its employees prior to July 1, 1990, may elect to provide for the early retirement of employees as set forth in this subsection in lieu of the early retirement and death before retirement provisions of the State Police Officers' Retirement System. Such election must be made to the Board in writing prior to July 1, 1990. Any member in service on or after his fifty-fifth birthday with five or more years of creditable service (i) as a member in the retirement system established by this chapter, (ii) as a member in the retirement system established by Chapter 2 (§ 51.1-200 et seq.) of this title, or (iii) as a member in the retirement system established by Chapter 2.1 (§ 51.1-211 et seq.) of this title may retire upon written notification to the Board setting forth at what time the retirement is to become effective. The effective date shall be after his last day of service but shall not be more than ~~ninety~~ 90 days prior to the filing of such notice. The member shall receive an allowance which shall be determined in the same manner as for retirement at an employee's normal retirement with creditable service and average final compensation being determined as of the date of his actual retirement. If the member has less than ~~thirty~~ 30 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 (a) the member's normal retirement date or (b) the first date on or after the member's fifty-fifth birthday on which the member would have completed a total of ~~thirty~~ 30 years of creditable service.

Members retiring under the provisions of this subsection shall be entitled to receive post-retirement supplements as provided in § 51.1-166. In computing the amount of any supplement, any additional allowances being paid under the provisions of subsection B of § 51.1-206 shall be disregarded. In the case of death before retirement, members whose employers elect to provide benefits in accordance with the provisions of this subsection and who have not attained the age of ~~fifty~~ 50 on the date of death shall be assumed to be ~~fifty~~ 50 years of age for the purposes of reducing the benefits on an actuarial equivalent basis.

D. The retirement system shall not be liable for the payment of any retirement allowances or other benefits on behalf of a member or beneficiary of a member for which reserves have not been previously created from funds contributed by the employer or the members for such benefits.

§ 51.1-202. Membership in retirement system.

Except as provided in subsection A of § 51.1-205 and subsections D and E of § 51.1-206, membership in the retirement system shall be compulsory for all state police officers.

§ 51.1-205. Service retirement generally.

A. Normal retirement. - Any member in service at his normal retirement date with five or more years of creditable service (i) as a member in the retirement system established by this chapter, (ii) as a member in the retirement system established by Chapter 2.1 (§ 51.1-211 et seq.) of Title 51.1, or (iii) while earning the benefits permitted by § 51.1-138 may retire upon written notification to the Board, setting forth the date the retirement is to become effective. *Any member in service at age 60 or older with five or more years of creditable service as a member in the retirement system established by this chapter may elect to retire and receive a retirement allowance pursuant to this chapter and may continue to receive such retirement allowance notwithstanding that such person is employed as a state police officer or as an employee, as defined in § 51.1-124.3, of the Department of State Police for a period of up to one year. Such period may be extended for up to one additional year with the prior approval of the Secretary of Public Safety.* Any member, except one appointed by the Governor or elected by the people, who attains ~~seventy~~ 70 years of age shall be retired forthwith. Any employer, subsequent to the employee's normal retirement date, may provide for compulsory service retirement upon a determination that age is a bona fide occupational qualification reasonably necessary to the normal operation of the particular business or that the employee is incapable of performing his duties in a safe and efficient manner. Any such determination shall be made by the employer.

B. Early retirement. - Any member in service who has attained his fiftieth birthday with five or more years of creditable service (i) as a member in the retirement system established by this chapter, (ii) as a member in the retirement system established by Chapter 2.1 (§ 51.1-211 et seq.) of Title 51.1, or (iii) while earning the benefits permitted by § 51.1-138 may retire upon written notification to the Board setting forth the date the retirement is to become effective.

C. Deferred retirement for members terminating service. - Any member who terminates service after five or more years of creditable service (i) as a member in the retirement system established by this chapter, (ii) as a member in the retirement system established by Chapter 2.1 (§ 51.1-211 et seq.) of Title 51.1, or (iii) while earning the benefits permitted by § 51.1-138, may retire under the provisions of subsection A, B, or D of this section if he has not withdrawn his accumulated contributions prior to the effective date of his retirement or if he has five or more years of creditable service (a) as a member in the retirement system established by this chapter, (b) as a member in the retirement system established by Chapter 2.1 (§ 51.1-211 et seq.) of Title 51.1, or (c) while earning the benefits permitted by § 51.1-138, regardless of termination date, for which his employer has paid the contributions and such contributions cannot be withdrawn. For the purposes of this subsection, any requirements as to the member being in service shall not apply. *A person receiving a retirement allowance pursuant to this chapter while employed as a state police officer or as an employee, as defined in § 51.1-124.3, of the Department of State Police pursuant to subsection A of this section or subsection E of § 51.1-206 shall not be eligible to retire as provided under this subsection.* No member shall be entitled to the benefits of this subsection if his employer certifies that his service was terminated because of dishonesty, malfeasance, or misfeasance in office. The certification may be appealed to the Board.

D. 50/10 retirement. - Any member in service on or after January 1, 1994, who has attained his fiftieth birthday with ~~ten~~ 10 or more years of creditable service may retire prior to his normal retirement date upon written notification to the Board setting forth the date the retirement is to become effective.

E. Effective date of retirement. - The effective date of retirement shall be after the last day of service of the member, but shall not be more than ~~ninety~~ 90 days prior to the filing of the notice of retirement.

F. Notification on behalf of member. - If 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.

§ 51.1-206. Service retirement allowance.

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

1. Normal retirement. - The allowance shall equal 1.70 percent of his average final compensation multiplied by the amount of creditable service.

For retirements between October 1, 1994, and December 31, 1998, any state police 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 or disability retirement allowance payable under this section. 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. - 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 ~~twenty-five~~ 25 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 or after his

fiftieth birthday on which he would have completed a total of ~~twenty-five~~ 25 years of creditable service.

3. 50/10 retirement. - The allowance shall be payable in a monthly stream of payments equal to the greater of (i) the amount the member would receive if he had taken early retirement or (ii) the actuarially calculated present value of the member's accumulated contributions, including accrued interest.

B. In addition to the allowance payable under subsection A, a member shall receive annually from the date of his retirement until 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), an allowance equal to \$9,264. Beginning July 1, 2001, and biennially thereafter, such allowance shall be reviewed and adjusted by the Board to an amount recommended by the actuary of the Virginia Retirement System based upon increases in social security benefits in the interim.

This subsection shall not apply to the following: (i) any member who qualifies for retirement under subsection C of § 51.1-205 and is credited with less than ~~twenty~~ 20 years' service rendered in a hazardous position or (ii) any member employed initially on or after July 1, 1974, who is credited with less than ~~twenty~~ 20 years' service rendered in a hazardous position.

C. *Except as provided in subsection D or E*, if a beneficiary of a service retirement allowance under this chapter 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.

D. *If a member in service at age 60 or older with five or more years of creditable service elects, pursuant to subsection A of § 51.1-205, to receive a service retirement allowance pursuant to this chapter while employed as a state police officer or as an employee, as defined in § 51.1-124.3, of the Department of State Police, then his service performed and compensation received while receiving such retirement allowance shall not increase, decrease, or affect in any way his retirement benefits before, during, or after the payment of such retirement allowance.*

E. *Any member between the ages of 55 and 59, inclusive, who is rehired by the Department of State Police as a state police officer or as an employee, as defined in § 51.1-124.3, of the Department of State Police, and who has been receiving a service retirement allowance under this chapter for a period of least 30 days prior to such reemployment may, upon such reemployment, elect to continue to receive such service retirement allowance for a period of up to one year. Such period may be extended for up to one additional year with the prior approval of the Secretary of Public Safety. If the person elects to continue to receive such retirement allowance during such period of reemployment, then his service performed and compensation received during such period of reemployment shall not increase, decrease, or affect in any way his retirement benefits before, during, or after such period of reemployment.*

2. That the provisions of subsection E of § 51.1-206 shall not become effective unless the Virginia Retirement System receives a written ruling from the Internal Revenue Service (IRS) that affirmatively states that the provisions of such subsection, were they to become effective, will not in any way adversely affect the qualified plan status of the Virginia Retirement System under federal law. The Virginia Retirement System shall seek such IRS ruling as soon as practicable in regard to the impact on such qualified plan status from the provisions of such subsection. Upon receipt of a written response from the IRS on such question, the Virginia Retirement System shall make the final determination, which shall be consistent with such IRS ruling or determination, whether the provisions of such subsection in any way adversely affect the qualified plan status of the Virginia Retirement System under federal law.

3. That the provisions of this act amending §§ 51.1-138, 51.1-202, 51.1-205, and 51.1-206 shall expire on July 1, 2005. On and after July 1, 2005, no person shall receive a retirement allowance under the State Police Officers' Retirement System while employed as a state police officer or as an employee, as defined in § 51.1-124.3, of the Department of State Police pursuant to the provisions of this act.