

1991 Assembly Bill 379

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1991 WISCONSIN ACT 152

AN ACT to repeal 40.06 (1) (e) 2; to renumber and amend 40.06 (1) (e) 1 and 40.26 (1); to amend 25.17 (14) (g), 25.17 (15), 40.02 (10), 40.02 (25) (b) 11, 40.02 (46), 40.03 (2) (i), 40.04 (1), 40.05 (2) (g), 40.06 (1) (e) 3, 40.06 (7), 40.08 (1m) (b) 1, 40.08 (7) (a), 40.08 (12), 40.22 (1), 40.22 (2) (a), 40.22 (2) (c), 40.22 (2) (L), 40.22 (2m) (intro.), 40.22 (6), 40.23 (1) (a) 3, 40.24 (1) (d), 40.24 (1) (f), 40.25 (2m), 40.25 (4), 40.25 (6) (a) 3, 40.51 (10), 40.55 (1), 40.55 (2), 40.63 (4), 40.70 (1) (intro.), 40.70 (6), 40.72 (4) (intro.) and 40.72 (4) (b); and to create 40.02 (25) (b) 6m, 40.03 (2) (ig) and (ir), 40.04 (4) (bm), 40.08 (7) (c), 40.22 (2) (gm), 40.26 (1) (b), 40.70 (1) (c), 40.70 (7m), 40.72 (4) (c) and 40.80 (2g) of the statutes, relating to: various changes affecting the Wisconsin retirement system and group insurance and other benefit plans for public employes and granting rule-making authority.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 25.17 (14) (g) of the statutes is amended to read:

25.17 (14) (g) With respect to all securities under pars. (a) to (e), the amount of any dividend, interest income including accrued interest, accrued interest received or accrued interest paid, arrears of interest or any other adjustment in interest income shall be transferred to the current income account of the fixed retirement investment trust under s. 40.04 (3).

SECTION 2. 25.17 (15) of the statutes is amended to read:

25.17 (15) For purposes of the power and authority of the investment board to make investments, the "admitted assets" of the fixed retirement investment trust or the variable retirement investment trust shall be the total valuation of the assets of such trust as set forth in the last report made pursuant to sub. (14), except for common stocks, plus the purchase price of any investments, other than common stocks, made subsequent to such last report, minus the admitted asset value of any asset sold, other than common stocks, subsequent to such last report, plus the market value of the common stocks of the trust on the last day of the preceding month. Any percentage

limitation or permission respecting the power and authority of the investment board to make investments shall be calculated as each occasion for investment occurs and upon the admitted assets of the trust at that time.

SECTION 3. 40.02 (10) of the statutes is amended to read:

40.02 (10) "Benefit plan" includes the Wisconsin retirement system, the employe-funded reimbursement account plan, deferred compensation plan, OASDHI, group health insurance, group income continuation insurance, group life insurance or any other insurance plan established under this chapter, regardless of whether each type of insurance is provided through one or multiple contracts or provides different levels of benefits to different employes.

SECTION 4. 40.02 (25) (b) 6m of the statutes is created to read:

40.02 (25) (b) 6m. Any insured employe of the state who terminates creditable service on or after the effective date of this subdivision ... [revisor inserts date], after attaining at least 20 years of creditable service, remains a participant and is not eligible for an immediate annuity or is not receiving a retirement or disability annuity, and who, if eligible, is receiving medicare coverage under

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both part A and part B of Title XVIII of the federal social security act, 42 USC 1395 to 1395zz.

SECTION 5. 40.02 (25) (b) 11. of the statutes is amended to read:

40.02 (25) (b) 11. Beginning on the date specified by the department, but not earlier than December 8, 1987, or later than July 1, 1988, any retired public employe, other than a retired employe of the state, who is receiving an annuity under the Wisconsin retirement system, or any beneficiary dependent of such an employe, as provided in the health insurance contract, who is receiving a continuation of the employe's annuity, and, if eligible, is receiving medicare coverage under both part A and part B of Title XVIII of the federal social security act, 42 USC 1395 to 1395zz, and who has acted under s. 40.51 (10) to elect group health insurance coverage.

SECTION 6. 40.02 (46) of the statutes is amended to read:

40.02 (46) "Participating employe" means an employe who is currently in the service of, or an employe who is on a leave of absence from, a participating employer under the Wisconsin retirement system and who has met the requirements of for inclusion within the provisions of the Wisconsin retirement system under s. 40.22.

SECTION 7. 40.03 (2) (i) of the statutes is amended to read:

40.03 (2) (i) Shall promulgate, with the approval of the board, all rules, except rules promulgated under par. (ig) or (ir), that are required for the efficient administration of the fund or of any of the benefit plans established by this chapter. In addition to being approved by the board, rules promulgated under this paragraph relating to teachers must be approved by the teachers retirement board and rules promulgated under this paragraph relating to participants other than teachers must be approved by the Wisconsin retirement board, except rules promulgated under s. 40.30.

SECTION 8. 40.03 (2) (ig) and (ir) of the statutes are created to read:

40.03 (2) (ig) Shall promulgate, with the approval of the group insurance board, all rules required for the administration of the group health, long-term care, income continuation or life insurance plans established under subchs. IV to VI.

(ir) Shall promulgate, with the approval of the deferred compensation board, all rules required for the administration of deferred compensation plans established under subch. VII.

SECTION 9. 40.04 (1) of the statutes is amended to read:

40.04 (1) The separate accounts and reserves under subs. (2) to (10) and any additional accounts and reserves determined by the department to be useful in achieving the fund's purposes, or necessary to protect the interests of the participants or the future solvency of the fund, shall

be maintained within the fund. The accounts and reserves maintained for each benefit plan shall fairly reflect the operations of that benefit plan ~~and any. Any~~ deficit occurring within the accounts of a benefit plan shall ~~not be offset against balances or reserves in any other benefit plan~~ be eliminated as soon as feasible by increasing the premiums, contributions or other charges applicable to that benefit plan. Until eliminated, any deficit shall be charged with interest at the rate the funds would have earned if there had been no deficit.

SECTION 10. 40.04 (4) (bm) of the statutes is created to read:

40.04 (4) (bm) Whenever a payment under s. 40.25 (1) is computed under s. 40.23 (3), the prior year's closing balance of all employe and employer contribution accumulations and any accounts maintained for individual participants shall be credited with interest for each full month elapsing between the first day of the calendar year and the month in which the payment under s. 40.25 (1) is approved at one-twelfth of the assumed benefit rate. The interest so credited shall be charged to the interest earnings for the current year and shall be paid out or transferred with the amount to which it was so credited.

SECTION 11. 40.05 (2) (g) of the statutes is amended to read:

40.05 (2) (g) A participating employer may make contributions as provided in its compensation agreements for any participating employe in addition to the employer contributions required by this subsection. The additional employer contributions made under this paragraph shall be available for all benefit purposes and shall be administered and invested on the same basis as employe additional contributions made under sub. (1) (a) 5., except that ss. 40.24 (1) (f) and 40.25 (4) and (6) (a) 3. do not apply to ~~them~~ additional employer contributions made under this paragraph.

SECTION 12. 40.06 (1) (e) 1. of the statutes is renumbered 40.06 (1) (e) and amended to read:

40.06 (1) (e) An employe may appeal a determination under par. (d), including a determination that the employe is not a participating employe, to the ~~department board~~ by filing a written appeal with the ~~department board~~. An appeal under this ~~subdivision~~ paragraph does not apply to any service rendered more than 7 years prior to the date on which the appeal is received by the ~~department board~~. The ~~department board~~ shall investigate consider the appeal and mail a report of its ~~determination~~ decision to the employe and the participating employer or state agency.

SECTION 13. 40.06 (1) (e) 2. of the statutes is repealed.

SECTION 14. 40.06 (1) (e) 3. of the statutes is amended to read:

40.06 (1) (e) 3. A determination of an employe's status under par. (d) made after an appeal is ~~filed~~ decided under this paragraph shall remain in effect until receipt by

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the department of a notification indicating a classification for the employe different from the determination. The employe may appeal that subsequent determination by filing an appeal as required under this paragraph.

SECTION 15. 40.06 (7) of the statutes is amended to read:

40.06 (7) Within 30 days after receipt of a qualified domestic relations order or of a written request from the department pursuant to a qualified domestic relations order, a participating employer shall submit to the department a report, in the form specified by the department, of the earnings, service and contributions of the participant named in the order. The report shall include all earnings, paid to and all service and contributions of the participant through the day before the decree date that have not previously been reported to the department.

SECTION 16. 40.08 (1m) (b) 1. of the statutes is amended to read:

40.08 (1m) (b) 1. The creditable service and the dollar amounts credited to all parts of the participant's account ~~on~~ through the day before the decree date, if the participant is not an annuitant on the decree date.

SECTION 17. 40.08 (7) (a) of the statutes is amended to read:

40.08 (7) (a) Any overpayment or underpayment of a lump-sum payment under s. 40.25 or a death benefit which is less than 60% of the amount specified in s. 40.25 (1) (a) rounded to the next highest dollar amount, and any annuity payment error which is less than \$2 per month may not be corrected but shall be credited or debited to the employer accumulation reserve or the appropriate insurance account. ~~If~~ However, if the amount of unapplied additional contributions ~~which~~ would increase an annuity payment by less than \$2 ~~exceeds \$10 but is more than 60% of the amount specified in s. 40.25 (1) (a) rounded to the next highest dollar amount,~~ the unapplied additional contributions shall be paid to the annuitant as a lump sum.

SECTION 18. 40.08 (7) (c) of the statutes is created to read:

40.08 (7) (c) If an annuity underpayment exceeding the limits in par. (a) has not been corrected for at least 12 months, the payment to the annuitant to correct the underpayment shall include 0.4% interest on the amount of the underpayment for each full month during the period beginning on the date on which the underpayment occurred and ending on the date on which the underpayment is corrected.

SECTION 19. 40.08 (12) of the statutes is amended to read:

40.08 (12) COURT REVIEW. Notwithstanding s. 227.52, any action, decision or determination of the board, ~~the Wisconsin retirement board, the teachers retirement board, the group insurance board or the deferred compensation board in an administrative proceeding~~ shall be reviewable only by an action for certio-

rari in the circuit court for Dane county that is commenced by any party to the administrative proceeding, including the department, within 30 days after the date on which notice of the action, decision or determination is mailed to that party, and any party to the certiorari proceedings may appeal the decision of ~~the reviewing that~~ court.

SECTION 20. 40.22 (1) of the statutes is amended to read:

40.22 (1) Except as provided in ~~subs. sub. (2) and (2m),~~ each employe currently in the service of, and receiving earnings from, a state agency or other participating employer shall be included within the provisions of the Wisconsin retirement system as a participating employe of that state agency or participating employer.

SECTION 21. 40.22 (2) (a) of the statutes is amended to read:

40.22 (2) (a) ~~The~~ Except as provided in sub. (2m), the employe is not expected to work at least one-third of what is considered full-time employment by the department, as determined by rule.

SECTION 22. 40.22 (2) (c) of the statutes is amended to read:

40.22 (2) (c) The employe is excluded from participation by s. ~~40.02 (54) (a) or~~ 40.21 (3) or (4).

SECTION 23g. 40.22 (2) (gm) of the statutes is created to read:

40.22 (2) (gm) The employe is initially employed by a participating employer on or after the effective date of this paragraph ... [revisor inserts date], is under the age of 20 and is regularly enrolled, or is expected to be regularly enrolled, as a full-time student in a school, as defined in s. 118.257 (1) (d).

SECTION 24. 40.22 (2) (L) of the statutes is amended to read:

40.22 (2) (L) The employe is employed by a participating employer after the person becomes an annuitant, unless the service is after the annuity is terminated under s. 40.26.

SECTION 25. 40.22 (2m) (intro.) of the statutes is amended to read:

40.22 (2m) (intro.) An employe who is not expected to work at least one-third of what is considered full-time employment by the department, as determined by rule, and who is not otherwise excluded under sub. (2) from becoming a participating employe shall become a participating employe if he or she is subsequently employed by the state agency or other participating employer for either of the following periods:

SECTION 26. 40.22 (6) of the statutes is amended to read:

40.22 (6) Notwithstanding subs. (1) to (5), if an employe's employment with an employer terminates after a period of service of less than ~~20 working~~ 30 calendar days, the employe is not eligible for retirement coverage for that period of service. This subsection does not

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affect an employee's eligibility for insurance coverage for that period of service.

SECTION 27. 40.23 (1) (a) 3. of the statutes is amended to read:

40.23 (1) (a) 3. If the participant is initially ~~employed covered under the Wisconsin retirement system~~ on or after January 1, 1990, the participant has creditable service in at least 5 calendar years.

SECTION 28. 40.24 (1) (d) of the statutes is amended to read:

40.24 (1) (d) An annuity payable for the life of the annuitant, and after the death of the annuitant, monthly payments, as elected by the participant of either a) 100% or b) 75% of the amount of the annuity paid to the annuitant to be continued to the one beneficiary, for life, who was designated by the participant in the original application for an annuity. If the participant's annuity effective date is on or after January 1, 1992, or, if the department specifies an earlier date that is not earlier than the effective date of this paragraph [revisor inserts date], on or after the date specified by the department, and if the death of the beneficiary occurs before the death of the annuitant and before the first day of the 61st month beginning after the annuity effective date, the annuity option under this paragraph shall be converted to the annuity option under par. (a) and, beginning with the annuity payment for the first month beginning after the death of the beneficiary, the annuity amount shall be the amount that the annuitant would be receiving on that date if the participant had elected the annuity option under par. (a) in the original application for an annuity.

SECTION 29. 40.24 (1) (f) of the statutes is amended to read:

40.24 (1) (f) From accumulated additional contributions made under s. 40.05 (1) (a) 5. only, an annuity certain payable for and terminating after the number of months specified by the applicant, regardless of whether the applicant dies before or after the number of months specified, provided that the monthly amount of the annuity certain is at least equal to the minimum amount established under s. 40.25 (1) (a). The number of months specified shall not exceed 180 and shall not be less than 24. If the death of the annuitant occurs prior to the expiration of the certain period, the remaining payments shall be made in accordance with s. 40.73 (2) without regard to any other annuity payments payable to the beneficiary. An annuity under this paragraph may be initiated prior to any other annuity amount provided under this subchapter and prior to age 55 if all other qualifications for receiving an annuity payment are met.

SECTION 30. 40.25 (2m) of the statutes is amended to read:

40.25 (2m) Notwithstanding sub. (2), if a participant who is initially ~~employed covered under the Wisconsin retirement system~~ on or after January 1, 1990, terminates employment and does not have creditable service in at

least 5 calendar years, a separation benefit may be paid if the participant submits a written application to the department for a separation benefit in an amount equal to the additional and employee required contribution accumulations of the participant on the date that the application for a separation benefit is approved. For the purposes of this subsection there are no age requirements for receiving a separation benefit.

SECTION 31. 40.25 (4) of the statutes is amended to read:

40.25 (4) If all the requirements for payment of a retirement annuity or a separation benefit are met, except filing of an application, a participant may elect that the accumulation from the participant's additional contributions made under s. 40.05 (1) (a) 5. be paid as a lump sum in lieu of an annuity from ~~the~~ those additional contributions.

SECTION 32. 40.25 (6) (a) 3. of the statutes is amended to read:

40.25 (6) (a) 3. The participating employe applying for forfeited creditable service under this subsection shall pay to the fund an amount equal to the employe's statutory contribution on earnings under s. 40.05 (1) (a) for each year of forfeited service to be reestablished, based upon the participating employe's final average earnings, determined as if the employe retired on the date the department receives the application. Beginning on the date specified by the department, but not earlier than the effective date of this subdivision [revisor inserts date], and not later than January 1, 1993, the participating employe may elect to use part or all of his or her accumulated additional contributions made under s. 40.05 (1) (a) 5. to pay part or all of the amount payable under this subdivision. The ~~required amount payable under this subdivision shall be paid in a lump sum payment or in installments with interest as provided by rule.~~ A participating employe who elects to use accumulated additional contributions as provided in this subdivision may terminate that election only if, within 30 days after the date on which the department receives the participating employe's application for forfeited creditable service, the participating employe submits to the department a written notice to terminate that election. No employer may pay any amount payable under this subsection ~~subdivision~~ on behalf of any participating employe.

SECTION 33. 40.26 (1) of the statutes is renumbered 40.26 (1) (intro.) and amended to read:

40.26 (1) (intro.) Except as provided in s. 40.23 (1) (am), if a participant receiving a retirement annuity, or a disability annuitant who has attained his or her normal retirement date, receives earnings ~~after January 1, 1982, that are~~ subject to s. 40.05 (1), ~~or which or that~~ would be subject to s. 40.05 (1) except for the ~~exclusions~~ exclusion specified in ~~ss. 40.02 (54) (a), 40.21 (3) and (4) and s. 40.22 (2) (L),~~ the annuity shall be terminated and no

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annuity payment shall be payable after the month in which ~~the~~ all of the following apply:

(a) ~~The total earnings that are~~ subject to s. 40.05 (1), ~~or which or that~~ would be subject to s. 40.05 (1) except for the ~~exclusions~~ exclusion specified in ~~ss. 40.02 (54) (a), 40.21 (3) and (4) and s. 40.22 (2), (L)~~ received in any annual earnings period exceeds an amount equal to 36 times the participant's final average earnings divided by 5, increased each January 1 after the annuity effective date by the prior year's salary index, ignoring fractions of a dollar.

SECTION 34. 40.26 (1) (b) of the statutes is created to read:

40.26 (1) (b) The participant files with the department a written election to be included within the provisions of the Wisconsin retirement system as a participating employee.

SECTION 35. 40.51 (10) of the statutes is amended to read:

40.51 (10) Beginning on ~~the date specified by the department, but not earlier than December 8, 1987, or later than July 1, 1988,~~ any eligible employee, as defined in s. 40.02 (25) (b) 11., may become covered by group health insurance by electing coverage within ~~30~~ 60 days after ~~his or her~~ the date of retirement on which he or she ceases to be a participating employee, and by paying the cost of the required premiums, as provided in s. 40.05 (4) (ad). ~~Any eligible employee who retires at least 30 days before the date specified by the department, but not earlier than December 8, 1987, or later than July 1, 1988, and any eligible employee who does not so elect at the time specified, or who later cancels the insurance, shall not thereafter become insured unless the employee furnishes evidence of insurability satisfactory to the insurer, at the employee's expense or obtains coverage subject to contractual waiting periods, and pays the cost of the required premiums, as provided in s. 40.05 (4) (ad). The method of payment shall be specified in the health insurance contract.~~

SECTION 36. 40.55 (1) of the statutes is amended to read:

40.55 (1) Except as provided in sub. (5), the state shall offer, through the group insurance board, to ~~all~~ eligible employees under s. 40.02 (25) (bm) and to ~~all~~ state annuitants ~~all~~ long-term care insurance policies which have been approved for sale in this state by the office of the commissioner of insurance and which have been approved for offering under ~~rules promulgated~~ contracts established by the group insurance board if the insurer requests that the policy be offered and the state shall also allow an eligible employee or a state annuitant to purchase those policies for his or her spouse or parent.

SECTION 37. 40.55 (2) of the statutes is amended to read:

40.55 (2) For any long-term care policy offered through the group insurance board, the insurer may

impose underwriting considerations in determining ~~which~~ the initial eligibility of persons to cover and what premiums to charge.

SECTION 39. 40.63 (4) of the statutes is amended to read:

40.63 (4) Notwithstanding sub. (1) ~~(a) to (d)~~ (b), a protective occupation participant is not disqualified from receiving a disability annuity, if the participant has accumulated 15 or more years of creditable service and would attain age 55 in 60 months or less after the occurrence of disability and the medical evidence, as provided in sub. (1), establishes a disability to the extent that the participant can no longer efficiently and safely perform the duties required by the participant's position, and that the condition is likely to be permanent.

SECTION 40. 40.70 (1) (intro.) of the statutes is amended to read:

40.70 (1) (intro.) Except as provided in sub. (11), each eligible employee of an employer shall be insured under the group life insurance plan provided ~~in accord with~~ under this subchapter if all of the following apply:

SECTION 41. 40.70 (1) (c) of the statutes is created to read:

40.70 (1) (c) The employee pays the employee contribution toward the life insurance premium under s. 40.05 (6).

SECTION 42. 40.70 (6) of the statutes is amended to read:

40.70 (6) ~~Any~~ Except as provided in sub. (7m), any employee who has not applied for coverage under sub. (1) within 6 months after becoming eligible for coverage or any employee whose insurance terminates under sub. (8) shall not thereafter become insured for that coverage unless prior to the attainment of age 55 the employee furnishes evidence of insurability satisfactory to the insurer, at his or her own expense. If the evidence is approved, the employee shall become insured ~~from~~ on the first day of the first month ~~commencing~~ beginning after the approval.

SECTION 43. 40.70 (7m) of the statutes is created to read:

40.70 (7m) If, as a result of employer error, an employee has not filed an application with the department as required under sub. (1) (b) or made premium contributions as required under sub. (1) (c) within 60 days after becoming eligible for group life insurance coverage, the employee is considered not to be insured for that coverage. The employee may become insured by filing a new application under sub. (1) (b) within 30 days after the employee receives from the employer written notice of the error. An employee is not required to furnish evidence of insurability to become insured under this subsection. An employee becomes insured under this subsection on the first day of the first month beginning after the date on which the employer receives the employee's new application under sub. (1) (b).

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SECTION 44. 40.72 (4) (intro.) of the statutes is amended to read:

40.72 (4) (intro.) The amount of life insurance for any insured employe who was either employed a participating employe before January 1, 1990, or who has been covered under the group life insurance plan in at least 5 calendar years after 1989, who terminates employment shall be the same as if the employe had not terminated employment and earnings had continued at the same amount as at the time of termination, except as provided in subs. (2) and (3) and s. 40.70 (3), if any of the following applies on the date of termination:

SECTION 45. 40.72 (4) (b) of the statutes is amended to read:

40.72 (4) (b) The sum of ~~either the employe's creditable service on January 1, 1990, or the employe's number of years of service with the participating employer by whom the employe was employed immediately before termination,~~ and the number of calendar years after 1989 in which the employe has been covered under the group

life insurance plan equals at least 20 years.

SECTION 46. 40.72 (4) (c) of the statutes is created to read:

40.72 (4) (c) The employe's number of years of service with the participating employer by whom the employe was employed immediately before termination equals at least 20 years.

SECTION 47. 40.80 (2g) of the statutes is created to read:

40.80 (2g) The deferred compensation board may accept timely appeals of determinations made by the department affecting any right or benefit under any deferred compensation plan provided for under this section.

SECTION 51. Initial applicability; rehired annuitants. The treatment of section 40.26 (1) of the statutes and the creation of section 40.26 (1) (b) of the statutes first apply to terminations of annuities under section 40.26 (1) of the statutes, as affected by this act, on the effective date of this SECTION.