

State of Wisconsin



1995 Senate Bill 449

Date of enactment: **May 1, 1996**
Date of publication*: **May 15, 1996**

1995 WISCONSIN ACT 302

(Vetoed in Part)

AN ACT to repeal 40.26 (1) (a) and (b) and 40.26 (2) (d); to renumber and amend 40.26 (1) (intro.); to amend 40.02 (8) (a) 1., 40.02 (14), 40.02 (22) (a), 40.02 (22) (b) 9., 40.02 (22) (e), 40.02 (26g), 40.02 (40), 40.05 (1) (a) 5., 40.05 (1) (a) 6., 40.08 (1m) (e) 2., 40.08 (1m) (f) 2., 40.08 (8) (b), 40.08 (8) (c), 40.08 (14), 40.23 (1) (a) 1., 40.23 (1) (b), 40.23 (1) (c), 40.23 (2m) (b), 40.24 (1) (f), 40.25 (6) (a) 3., 40.25 (7) (a) 1., 40.26 (3) (bm) (intro.), 40.27 (2) (b), 40.73 (3) (a), 40.73 (3) (e) and 40.86 (intro.); to repeal and recreate 40.08 (6), 40.08 (8) (a) and 40.23 (1) (d); to create 40.015, 40.02 (39m), 40.02 (48r), 40.03 (1) (am), 40.03 (2) (t), 40.05 (1) (a) 7., 40.05 (2r), 40.08 (1m) (e) 4., 40.23 (4), 40.24 (5), 40.24 (7) (a) 6., 40.25 (6) (a) 5., 40.25 (7) (g), 40.26 (5), 40.31, 40.32, 111.91 (2) (k), 111.91 (2) (L) and 111.91 (2) (m) of the statutes; and to affect 1995 Wisconsin Act 27, section 1946m and 1995 Wisconsin Act 27, section 9459 (2) (d); relating to: maximum benefit and contribution limits under the Wisconsin retirement system, granting rule-making authority and making an appropriation.

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

SECTION 1. 40.015 of the statutes is created to read:

40.015 Compliance with federal tax laws. (1) The Wisconsin retirement system is established as a governmental plan and as a qualified plan for federal income tax purposes under the internal revenue code and shall be so maintained and administered.

(2) No benefit plan authorized under this chapter may be administered in a manner which violates an internal revenue code provision that authorizes or regulates that benefit plan or which would cause an otherwise tax exempt benefit to become taxable under the internal revenue code.

SECTION 2. 40.02 (8) (a) 1. of the statutes is amended to read:

40.02 (8) (a) 1. The person, or a trust in which the person has a beneficial interest, so designated by a participant or insured employee or annuitant in the last written

designation of beneficiary on file with, and in the form approved by, the department at the time of death, except as provided in s. 40.23 (4) (c). A written designation of beneficiary for a specified benefit plan applies only for determining beneficiaries under that specified benefit plan.

SECTION 3. 40.02 (14) of the statutes is amended to read:

40.02 (14) "Creditable current service" means the creditable service granted for service performed for a participating employer and for which a participating employee receives earnings ~~from a participating employer~~ after the effective date of participation for that employer.

SECTION 4. 40.02 (22) (a) of the statutes is amended to read:

40.02 (22) (a) Except as provided in pars. (b) to (f) and s. 40.63 (1) (c), means the gross amount paid to an employee by a participating employer as salary or wages, including amounts provided through deferred compensation or tax shelter agreements, for personal services ren-

* Section 991.11, WISCONSIN STATUTES 1993-94: Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication as designated" by the secretary of state [the date of publication may not be more than 10 working days after the date of enactment].

dered to or for an employer, or which would have been available for payment to the employee except for the employee's election that part or all of the amount be used for other purposes and also includes the money value, as determined by the employer, of any board, lodging, fuel, laundry and other allowances provided for the employee in lieu of money. For purposes of this paragraph, the gross amount shall be determined prior to deductions for taxes, insurance premiums, retirement contributions or deposits, charitable contributions or similar amounts and shall be considered received as of the date when the earnings would normally be payable by the employer. For reporting and computation purposes, fractions of a dollar shall be disregarded in determining annual earnings.

SECTION 5. 40.02 (22) (b) 9. of the statutes is amended to read:

40.02 (22) (b) 9. Payments for damages, attorney fees, interest or penalties paid under court judgment or by compromise settlement to satisfy a grievance or wage claim even though the amount of damages or penalties might be based on previous salary levels. However, ~~where the court order or compromise settlement directs that salary be paid for a specified period of time, the payment shall be considered covered earnings applicable to the period specified in the order or settlement, and if the order or settlement provides that the salary be reduced by amounts earned from other sources, then the covered earnings shall be determined prior to the reduction~~ the department may by rule provide that a payment of additional wages to a continuously participating employee, or the payment of salary to a participant for any period of improper termination of participating employment, is earnings, if the payment is treated by the employer and employee as taxable income and is consistent with previous payment for hours of service rendered by the employee.

SECTION 6. 40.02 (22) (e) of the statutes, as affected by 1995 Wisconsin Act 27, section 1946, is amended to read:

40.02 (22) (e) Except for OASDHI purposes, ~~at the employer's discretion,~~ means compensation deemed to have been paid for services deemed to have been rendered ~~during periods of leaves of absence without pay, while serving in a position covered under, and meeting the requirements of, 38 USC 4301, et seq.,~~ at the employee's rate of pay prior to the leave beginning such service, provided contributions and premiums on the deemed earnings are paid as required under s. 40.05. ~~Any action taken under this paragraph that applies to state employees shall be taken pursuant to a collective bargaining agreement under subch. V of ch. 111 or s. 230.12 or 233.10.~~

SECTION 7. 40.02 (26g) of the statutes is amended to read:

40.02 (26g) "Employee-funded reimbursement account plan" means a plan in accordance with section 125 of the internal revenue code, ~~as defined in s. 71.01,~~ under

which an employee may direct an employer to place part of the employee's gross compensation in an account to pay for certain future expenses of the employee under section 125 of the internal revenue code.

SECTION 8. 40.02 (39m) of the statutes is created to read:

40.02 (39m) "Internal revenue code" means the internal revenue code, as defined for the current taxable year under s. 71.01 (6), and applicable regulations adopted under the internal revenue code, including temporary regulations.

SECTION 9. 40.02 (40) of the statutes is amended to read:

40.02 (40) "Leave of absence" means any period during which an employee has ceased to render services for ~~a participating employer~~ and receive earnings ~~from a participating employer~~ and there has been no formal termination of the employer-employee relationship. For purposes of the fund every leave of absence, except a military leave or union service leave, shall terminate 3 years after it begins or, if earlier, upon the date specified by the employer in a notification to the department that the employer-employee relationship has terminated. A leave of absence is not deemed ended or interrupted by reason of resumption of active duty until the employee has resumed active performance of duty for 30 consecutive calendar days for at least 50% of what is considered that employee's normal work time with that employer. For the purpose of group health insurance coverage, every leave of absence due to employee layoff which has not been terminated before 3 years have elapsed shall continue for affected insured employees until an additional 2 years elapse or until sick leave credits used to pay health insurance premiums are exhausted, whichever occurs first.

SECTION 10. 40.02 (48r) of the statutes is created to read:

40.02 (48r) "Required beginning date" means the later of April 1 of the calendar year following the calendar year in which a participant attains the age of 70.5 years or April 1 of the calendar year following the calendar year in which a participating employee retires.

SECTION 10m. 40.03 (1) (am) of the statutes is created to read:

40.03 (1) (am) Shall ensure that the Wisconsin retirement system complies with the internal revenue code as a qualified plan for income tax purposes and shall ensure that each benefit plan is administered in a manner consistent with all internal revenue code provisions that authorize and regulate the benefit plan.

SECTION 11. 40.03 (2) (t) of the statutes is created to read:

40.03 (2) (t) Shall ensure that the Wisconsin retirement system complies with the internal revenue code as a qualified plan for income tax purposes and shall ensure that each benefit plan is administered in a manner consis-

tent with all internal revenue code provisions that authorize and regulate the benefit plan.

SECTION 12. 40.05 (1) (a) 5. of the statutes is amended to read:

40.05 (1) (a) 5. Additional contributions may be made by any participant by deduction from earnings or otherwise or may be provided on behalf of any participant in any calendar year in which the participant has earnings, subject to any limitations imposed on contributions by the U.S. internal revenue code, applicable regulations adopted under the internal revenue code and rules of the department.

SECTION 13. 40.05 (1) (a) 6. of the statutes is amended to read:

40.05 (1) (a) 6. Under the rules promulgated under s. 40.03 (2) (r), additional contributions, other than the first \$5,000 of contributions, or a beneficiary's prorated share thereof, that are attributable to a death benefit paid under s. 40.73, may be made to the fixed annuity division by any participant by rollover contribution of a payment or distribution from a pension or annuity qualified under section 401 of the internal revenue code, ~~as defined in s. 71.01(6)~~, subject to any limitations imposed on contributions by the internal revenue code, applicable regulations adopted under the internal revenue code and rules of the department.

SECTION 14. 40.05 (1) (a) 7. of the statutes is created to read:

40.05 (1) (a) 7. Subject to any applicable limitations under the internal revenue code, a participating employe may elect to use part or all of his or her accumulated after-tax additional contributions, including interest, made under subd. 5., other than contributions treated by the department as contributions to a tax sheltered annuity under section 403 (b) of the internal revenue code, to purchase creditable service under this chapter.

SECTION 15. 40.05 (2r) of the statutes is created to read:

40.05 (2r) ANNUAL CONTRIBUTIONS LIMITATIONS; DISQUALIFICATION PROCEDURE. (a) Contributions made under this section are subject to the limitations under s. 40.32 and the internal revenue code.

(b) If a participant in the Wisconsin retirement system also participates in a different retirement plan offered by an employer that is subject to section 401 of the internal revenue code and the internal revenue service seeks to disqualify one or more of the plans because the aggregate contributions to the plans exceed the contribution limits under section 415 of the internal revenue code, the internal revenue service, if it permits state law to determine the order of disqualification of such retirement plans, shall disqualify the retirement plans in the following order:

1. Retirement plans offered and administered by the employer.

2. Retirement plans offered by the employer, but administered by the department.

3. The Wisconsin retirement system.

SECTION 16. 40.08 (1m) (e) 2. of the statutes is amended to read:

40.08 (1m) (e) 2. Except as provided in ~~subd. subds. 3. and 4.~~, the control and ownership rights of the alternate payee over his or her share of the account shall be the same as if the alternate payee were a participant who had ceased to be a participating employe but had not applied for a benefit under s. 40.23 or 40.25 on the decree date or the date that the participant terminated covered employment, whichever is earlier.

SECTION 17. 40.08 (1m) (e) 4. of the statutes is created to read:

40.08 (1m) (e) 4. An alternate payee, who elects an annuity option, may only elect among the options under s. 40.24 that provide payments that are calculated only on the basis of the age of the alternate payee.

SECTION 18. 40.08 (1m) (f) 2. of the statutes is amended to read:

40.08 (1m) (f) 2. If the participant is an annuitant on the decree date, the annuity shall be recomputed using the total value of the participant's account determined under par. (b) reduced by the total of the alternate payee share transferred under par. (e) 1., in accordance with the actuarial tables in effect and using the participant's age on the decree date. The decree date shall be the effective date of recomputation. If the optional annuity form before division of the participant's account under par. (b) was not a joint and survivor annuity with the alternate payee as the named survivor, the same annuity option with no change in the remaining guarantee period, if any, shall be continued upon recomputation to ~~both the participant and the alternate payee.~~ The present value of the alternate payee's share of the annuity after division shall be paid to the alternate payee as a straight life annuity based on the age of the alternate payee on the decree date. The alternate payee's annuity shall have the same remaining guarantee period, if any, as the participant's annuity. If the optional annuity form before division of the participant's account under par. (b) was a joint and survivor annuity with the alternate payee as the named survivor, the present value of the annuity after division shall be paid to both the participant and the alternate payee as a straight life annuity based upon their respective ages on the decree date. If the participant's account is reestablished under s. 40.26 (2) after the decree date, the memorandum account created under s. 40.26 (2) (b) shall be adjusted by the total of the alternate payee share computed under this subdivision. If the participant's account is reestablished under s. 40.63 (10) after the decree date, the amounts and creditable service reestablished shall be reduced by an amount equal to the percentage of the alternate payee share computed under this subdivision.

SECTION 19. 40.08 (6) of the statutes is repealed and recreated to read:

40.08 (6) REFUNDS. (a) Notwithstanding s. 20.913, but subject to par. (b), the department may refund any money paid in error to the fund by or on behalf of a person who is not a participant.

(b) The department may not refund any money paid into the fund by an employer, but shall by rule credit the money to the employer.

(c) Except as provided in par. (d), money paid into the fund by an employer on behalf of a participant which exceeds the contribution limits under s. 40.32 may not be refunded to the employer, but the department shall by rule credit the money to the employer and the employer shall pay the participant the amount of the credit as additional wages or salary.

(d) Money paid into the fund by a participant which exceeds the contribution limits under s. 40.32 may be refunded directly to the participant if the department determines that the money was paid on an after-tax basis.

(e) No interest may be credited to any money refunded under this subsection.

SECTION 20. 40.08 (8) (a) of the statutes is repealed and recreated to read:

40.08 (8) (a) Benefits provided under this chapter shall be considered abandoned as follows:

1. Any potential primary beneficiary under s. 40.02 (8), other than an estate, who has not applied for any benefit payable under this chapter as a result of the death of the participant and whom the department cannot locate by reasonable efforts, as determined by the department by rule, within one year after the death of the participant shall be presumed to have predeceased the participant and all other potential beneficiaries. Thereafter, if the department is unable to locate any resulting subsequent beneficiary within 6 months, all beneficiaries under s. 40.02 (8) (a) 1. and 2. shall be presumed to have predeceased the participant and the department shall pay all benefits payable under this chapter as a result of the death of the participant to the participant's estate in a lump sum.

2. If an estate that is determined by the department to be a beneficiary is closed prior to the payment of benefits payable under this chapter as a result of the death of the participant and the estate is not reopened within 6 months after the department notifies the estate that a benefit is payable, the benefit shall be considered irrevocably abandoned and shall be transferred to the employer accumulation reserve, unless the estate was the designated beneficiary under s. 40.02 (8) (a) 1.

2m. If the estate was the designated beneficiary under s. 40.02 (8) (a) 1. and the estate is closed prior to the payment of benefits payable under this chapter as a result of death of the participant and the estate is not reopened within 6 months after the department notifies the estate that a benefit is payable, the department shall pay the benefit to a beneficiary as determined under s. 40.02 (8) (a)

2. If the department is unable to locate any such beneficiary within 6 months, all such beneficiaries shall be presumed to have predeceased the participant and the benefit shall be considered irrevocably abandoned and shall be transferred to the employer accumulation reserve.

3. A participant, other than a participating employee or annuitant, whom the department cannot locate by reasonable efforts, with such efforts beginning by the end of the month in which the participant attains, or would have attained, the age of 65, shall be considered to have abandoned all benefits under the Wisconsin retirement system on the date on which the participant attains, or would have attained, the age of 70. The department shall close the participant's account and shall transfer the moneys in the account to the employer accumulation reserve. The department shall restore the participant's account and shall debit the employer accumulation reserve accordingly if the participant subsequently applies for retirement benefits under this chapter before attaining the age of 80.

4. The former spouse of a participant who is an alternate payee and whom the department cannot locate by reasonable efforts, with such efforts beginning by the end of the month in which the participant attains, or would have attained, the age of 65, shall be considered to have abandoned all benefits under the Wisconsin retirement system on the date on which the participant attains, or would have attained, the age of 70. The department shall close the alternate payee's account and shall transfer the moneys in the account to the employer accumulation reserve. The department shall restore the alternate payee's account and shall debit the employer accumulation reserve accordingly if the alternate payee subsequently applies for retirement benefits under this chapter before the participant attains or would have attained the age of 80.

5. All presumptions under this paragraph are conclusive upon payment of the benefit payable under this chapter as a result of the death of the participant to any qualifying person, estate or entity other than the employer accumulation reserve.

SECTION 21. 40.08 (8) (b) of the statutes is amended to read:

40.08 (8) (b) All moneys or credits in an account for a person presumed to have died intestate, without heirs or beneficiary, or to be abandoned by the person under par. (a) shall be applied, at the end of the calendar year in which notice is published under par. (c), to the ~~appropriate employer accounts~~ employer accumulation reserve to reduce future funding requirements.

SECTION 22. 40.08 (8) (c) of the statutes is amended to read:

40.08 (8) (c) The department shall publish a class 1 notice, under ch. 985, in the official state paper stating the names of persons presumed to have died intestate, without heirs or beneficiary, or whose accounts are presumed

to be abandoned under par. (a), and the fact that a benefit will be paid to the respective persons listed or their respective heirs or legatees on proof of ownership, if applied for within 10 years after the date of publication of the notice the time limits under par. (a) and if the participant, alternate payee or other person offers proof satisfactory to the department that the participant, alternate payee or other person is entitled to the benefit. Such proof shall include, but is not limited to, evidence that the participant died and that the person is the beneficiary under s. 40.02 (8).

SECTION 23. 40.08 (14) of the statutes is amended to read:

40.08 (14) (title) ~~LUMP-SUM ROLLOVERS~~ ROLLOVERS TO OTHER RETIREMENT PLANS. If a participant who is entitled to receive a lump sum payment or a monthly annuity certain under s. 40.24 (1) (f) for which the participant has specified a term of less than 120 months from the Wisconsin retirement system and who has an account established under any other retirement plan located in the United States so directs in writing, on a form prescribed by the department, the department shall pay the lump sum payment or the monthly annuity directly to the participant's account under that other retirement plan for credit under that other retirement plan. The department shall cease payment of the monthly annuity payments to the annuitant's account under the other retirement plan within 30 days of the written request of the annuitant or written notice of the annuitant's death.

SECTION 24. 40.23 (1) (a) 1. of the statutes is amended to read:

40.23 (1) (a) 1. The participant is separated, regardless of cause, and continues to be separated ~~either~~ until the annuity effective date, ~~or until the date~~ 30 days after the application is received by the department, or the date 30 days after separation, whichever is later, from all employment meeting the qualifications for inclusion specified in s. 40.22 for any participating employer.

SECTION 25. 40.23 (1) (b) of the statutes is amended to read:

40.23 (1) (b) All retirement annuities shall be effective on the day following, or on the first day of a month following, the date of separation from the last participating employer by which the participant was employed, as specified by the participant in the written application for the annuity. However, the date shall not be more than 90 days prior to the date of receipt of the application by the department. The participant may specify that additional contribution accumulations shall not be applied to provide an annuity until a subsequent application is filed for an annuity to be paid from the additional contribution accumulations. The subsequent application shall be made as specified under sub. (4) or the department shall automatically distribute the accumulated additional contribution accumulations as a lump sum.

SECTION 26. 40.23 (1) (c) of the statutes is amended to read:

40.23 (1) (c) No application specifying an annuity effective date later than 60 days after the date of its receipt by the department shall be accepted, unless the participant files the application on or after January 1 of the calendar year in which the participant attains the age of 69.5 years specifying an annuity effective date that begins before April 1 of the calendar year following the calendar year in which the participant attains the age of 70.5 years.

SECTION 27. 40.23 (1) (d) of the statutes is repealed and recreated to read:

40.23 (1) (d) Notwithstanding par. (c), an application for an annuity to be effective on the day following termination of employment may be filed up to 90 days prior to the employee's anticipated termination date. The anticipated termination date shall be stated in the application and the department shall not make an annuity payment until the employee has terminated. The department shall reject any application that is filed more than 90 days prior to the employee's termination date.

SECTION 28. 40.23 (2m) (b) of the statutes is amended to read:

40.23 (2m) (b) Except as provided in s. 40.26, subject to the limitations under section 415 of the internal revenue code, ~~as defined for the current taxable year under s. 71.01 (6),~~ the initial amount of the normal form annuity shall be an amount equal to 65%, or 85% for participants whose formula rate is determined under par. (e) 4., of the participant's final average earnings plus the amount which can be provided under pars. (c) and (d) or, if less, shall be in the monthly amount equal to the sum of the amounts determined under pars. (c), (d) and (e) as modified by par. (f) and in accordance with the actuarial tables in effect on the annuity effective date. If the participant has creditable service under both par. (e) 4. and another category under par. (e), the percent applied under this paragraph shall be determined by multiplying the percent that each type of creditable service is of the participant's total creditable service by 85% and 65%, respectively, and adding the results, except that the resulting benefit may not be less than the amount of the normal form annuity that could be paid based solely on the creditable service under par. (e) 4.

SECTION 29. 40.23 (4) of the statutes is created to read:

40.23 (4) (a) Subject to all requirements under the internal revenue code, the department shall distribute to the participant the entire amount that is credited to the account of a participant under the Wisconsin retirement system no later than the required beginning date, unless the department distributes this amount as an annuity or in more than one payment. If the department distributes this amount as an annuity or in more than one payment, the

department shall begin the distribution no later than the required beginning date.

(b) In the calendar year immediately preceding the calendar year of a participant's required beginning date, if the department distributes the amount that is credited to the account of a participant under the Wisconsin retirement system in a form other than as a lump sum payment, the department, subject to all requirements under the internal revenue code, shall calculate the distribution to the participant according to one of the following:

1. The life of a participant or, if the annuity is in the form of a joint and survivor annuity, the joint lives of the participant and the named survivor.

2. For an annuity authorized under s. 40.24 (1) (f), a term certain not to exceed the life expectancy of the participant or, if the annuity is in the form of a joint and survivor annuity, the joint life expectancies of the participant and the named survivor.

(c) If a participant during the calendar year in which he or she attains 69.5 years, or the alternate payee during the calendar year in which the participant attains 69.5 years, does not apply before December 31 in that year for a distribution of the amount that is credited to the account of a participant under the Wisconsin retirement system, the department shall begin, effective the following January 1, an automatic distribution to the participant or alternate payee in the form of an annuity specified under s. 40.24 (1) (c) or as determined by the department by rule. If the department makes an automatic distribution under this paragraph, the beneficiary designation filed with the department before the date on which the department begins the automatic distribution is no longer applicable under ss. 40.71 and 40.73. Unless the participant or alternate payee files a subsequent beneficiary designation with the department after the date on which the department begins the automatic distribution, the department shall pay any death benefit as provided under s. 40.02 (8) (a) 2.

(d) If a participant dies after the department begins to distribute the amount that is credited to the account of a participant under the Wisconsin retirement system, but before the entire amount in the account has been distributed, the department shall distribute the remaining portion of the account at least as rapidly as is provided in the manner of distribution selected by the participant. If the beneficiary does not apply to the department to continue the distribution, within a period specified by rule, the department shall pay the remaining distribution to the beneficiary as a lump sum.

(e) 1. Subject to subds. 2. to 4., if a participant dies before the distribution of benefits has commenced and the participant's beneficiary is the spouse, the department shall begin the distribution within 5 years after the date of the participant's death.

2. If the spouse files a subsequent beneficiary designation with the department, the payment of the distribu-

tion may be deferred until the January 1 of the year in which the participant would have attained the age of 70.5 years.

3. If the spouse does not apply for a distribution, the distribution shall begin as an automatic distribution as provided under subd. 1. or under par. (c), whichever distribution date is earlier.

4. If the spouse dies, but has designated a new beneficiary, the birth date of the spouse shall be used for the purposes of determining the required beginning date.

5. The department shall specify by rule all procedures relating to an automatic distribution to the spouse. These rules shall comply with the internal revenue code.

(f) If a participant dies before the distribution of benefits has commenced and the participant's beneficiary is not the spouse, the beneficiary shall do one of the following:

1. Elect a lump sum payment by December 31 of the 5th calendar year after the date of the participant's death.

2. Elect an annuity benefit, not to exceed his or her life expectancy, by December 31 of the calendar year after the date of the participant's death.

(g) Nothing in this subsection shall be construed to create any benefit, lump sum payment option or form of annuity not otherwise expressly provided for in this subchapter.

SECTION 30. 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 Subject to the period of distribution required under s. 40.23 (4) (b) 2., 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 31. 40.24 (5) of the statutes is created to read:

40.24 (5) An annuity in a form other than the normal form shall be the actuarial equivalent of the annuity in the normal form if, on the effective date of the annuity, the annuity has the same single-sum present value as the annuity in the normal form, as calculated by the department according to methods and assumptions specified by the actuary.

SECTION 32. 40.24 (7) (a) 6. of the statutes is created to read:

40.24 (7) (a) 6. Automatic distributions under s. 40.23 (4).

SECTION 34. 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 April 23, 1992, 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 amount payable under this subdivision shall be paid in a lump sum payment. 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, except that the department may, by rule, permit a participating employe to reestablish creditable service by making payments over a period of more than one year.~~ No employer may pay any amount payable under this subdivision on behalf of any participating employe.

SECTION 35. 40.25 (6) (a) 5. of the statutes is created to read:

40.25 (6) (a) 5. The payment under subd. 3., in combination with any other required contributions or additional contributions, may not exceed the maximum contribution limit under section 415 of the internal revenue code.

SECTION 36. 40.25 (7) (a) 1. of the statutes is amended to read:

40.25 (7) (a) 1. The participant files an application to receive creditable service under this paragraph ~~not more than 90 days after~~ before termination of employment as a participating employe.

SECTION 36m. 40.25 (7) (g) of the statutes is created to read:

40.25 (7) (g) The payment under par. (a) 5., in combination with any other required contributions or additional contributions, may not exceed the maximum contribution limit under section 415 of the internal revenue code.

SECTION 37. 40.26 (1) (intro.) of the statutes is renumbered 40.26 (1) and amended to read:

40.26 (1) Except as provided in ss. 40.05 (2) (g) 2. and 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 that are subject to s. 40.05 (1) or that would be subject to s. 40.05 (1) except for the exclusion specified in s. 40.22 (2) (L), the annuity shall be terminated and no annuity payment shall be payable after the month in which ~~all of the following apply:~~ the participant files with the department a written election to be included within the provisions of the Wisconsin retirement system as a participating employe.

SECTION 38. 40.26 (1) (a) and (b) of the statutes are repealed.

SECTION 39. 40.26 (2) (d) of the statutes is repealed.

SECTION 40. 40.26 (3) (bm) (intro.) of the statutes is amended to read:

40.26 (3) (bm) (intro.) If a former annuitant ~~receives earnings at or above the level specified under sub. (1) for~~ becomes a participating employe and accumulates at least 3 continuous years of creditable service before subsequent retirement and application for an annuity under this subsection, and if changes in the statutes after the effective date of the original annuity would result in a change in the amount of an annuity recomputed under this subsection, the annuity of the former annuitant shall be recomputed as follows:

SECTION 41. 40.26 (5) of the statutes is created to read:

40.26 (5) If a participant applies for an annuity or lump sum payment during the period in which less than 30 days have elapsed between the termination of employment with a participating employer and becoming a participating employe with any participating employer, all of the following shall apply:

(a) The participant shall not qualify for an annuity under s. 40.23 (1) (a) 1.

(b) The participant may not receive any benefit under this chapter on which the receipt of an annuity is a condition.

(c) Any annuity or lump sum payment made to the participant shall be considered to have been made in error and is subject to s. 40.08 (4). The sum of the payments made in error shall be credited to a memorandum account. The memorandum account is subject to s. 40.04 (4) (a) 2. and 2m. and (c). If the annuity was recomputed under s. 40.08 (1m), the memorandum account established under this paragraph shall be adjusted pursuant to s. 40.08 (1m) (f) 2. The retirement account of a participant paid in error, and whose annuity was terminated, shall be reestablished as if the terminated annuity had never been effective, including the crediting of interest.

SECTION 42. 40.27 (2) (b) of the statutes is amended to read:

40.27 (2) (b) ~~Different Prorated percentages based on the annuity effective date may be applied to annuities with different effective dates as may be determined to be equitable during the calendar year preceding the effective date of the distribution, as provided by rule,~~ but no other distinction may be made among the various types of annuities payable from the fixed annuity reserve.

SECTION 43. 40.31 of the statutes is created to read:

40.31 Maximum benefit limitations. (1) GENERAL LIMITATION. (a) *Limitation amounts.* Except as otherwise expressly provided in this section, the maximum retirement benefits payable to a participant in a calendar year, excluding benefits attributable to contributions subject to any limitations under s. 40.23 (2) (a), (2m) (c) and (3), may not exceed the lesser of the following:

1. For a straight-life annuity terminating at the death of the annuitant, \$120,000. If the annuity is in a form other than a straight-life annuity, the limitation is the reduced actuarial equivalent of a straight-life annuity terminating at the death of the annuitant and paying \$120,000 per year.

2. One hundred percent of the participant's average annual compensation for the period of up to 3 consecutive calendar years during which the person was a participating employe and which yield the highest average annual compensation. In this subdivision, "compensation" has the meaning of "compensation" under section 415 (c) (3) of the internal revenue code.

(b) *Early commencement.* If the participant's benefit commencement date occurs before the date on which the participant attains the age of 62, the dollar limitation under par. (a) shall be the actuarial equivalent of the dollar limitation of an annual straight life annuity beginning at the age of 62 and terminating at the death of the annuitant. For the purposes of this paragraph, the interest rate assumption that is used to determine the actuarial equivalency may not exceed 5%. Under this subsection, the dollar limitation shall be:

1. Not less than \$75,000 if the benefit commences at or after the age of 55.

2. Equal to \$75,000 if the benefit commences before the age of 55.

3. Not less than \$50,000 for participants who have at least 15 years of service as a full-time employe of any police or fire department which is organized and operated by the employer to provide police protection, fire fighting services or emergency medical services for any geographic area within the jurisdiction of the employer.

(c) *Deferred commencement.* If the participant's benefit commencement date occurs after the date on which the participant attains the age of 65, the dollar limitation under par. (a) shall be the actuarial equivalent of the dollar limitation of an annual straight life annuity beginning at the age of 65 and terminating at the death of the annuitant. For the purposes of this paragraph, the interest

rate assumption that is used to determine the actuarial equivalency may not exceed 5%.

(d) *Limitation adjustments.* The dollar limitations under pars. (a) 1. and (b) and the compensation limit under par. (a) 2. may be adjusted by the department by rule to conform with any applicable U.S. treasury regulations concerning cost-of-living adjustments.

(2) **EXCEPTIONS TO GENERAL LIMITATION.** Benefits payable to a participant shall be considered not to exceed any limitation under this section if one of the following applies:

(a) The amount of the benefit does not exceed the total benefits of the participant under all of the qualified defined benefit plans maintained or previously maintained by all of a participant's employers, as determined by the department without regard to any amendment to any of the benefit plans made after October 14, 1987.

(b) The amount of the benefit does not exceed \$10,000 for the plan year and none of the participant's employers have at any time maintained a defined contribution plan in which the participant participated.

(3) **TREATMENT OF DEFINED BENEFIT AND DEFINED CONTRIBUTION PLANS.** For the purpose of determining whether a participant's retirement benefits exceed the maximum retirement limitations under this section, all defined benefit plans of the employer, including defined benefit plans that are terminated, shall be treated as a single defined benefit plan and all defined contribution plans of the employer, including defined contribution plans that are terminated, shall be treated as a single defined contribution plan. The department may provide by rule additional limitations for participants who are participating in more than one retirement system.

(4) **DIVISION OF BENEFITS.** For the purpose of determining whether a participant's retirement benefits exceed the maximum retirement limitations under this section for a participant whose retirement benefits have been divided under s. 40.08 (1m), the participant's retirement benefits shall be measured as if no division had occurred.

SECTION 44. 40.32 of the statutes is created to read:

40.32 Limitations on contributions. (1) The sum of all contributions allocated to a participant's account under each defined contribution plan sponsored by the employer, including all employer contributions and picked-up contributions credited with interest at the effective rate under s. 40.04 (4) (a) and (5) (b) and all employe contributions made under ss. 40.02 (17), 40.05 (1) and (2m) and 40.25 (6) (a) and (7) (a), may not in any calendar year exceed the lesser of the following:

(a) Thirty thousand dollars.

(b) Twenty-five percent of the participant's compensation, as defined in the internal revenue code, for the calendar year.

(2) The department may provide by rule additional limitations for participants who are participating in more than one retirement system.

(3) Any contribution that the department receives, which is allocated to the account of a participant and which exceeds the contributions limitation under this section, may be refunded or credited as provided in s. 40.08 (6). If the department refunds any contributions that exceed the limitation under this section, the department shall first refund amounts voluntarily contributed by a participating employe, either as an additional contribution under s. 40.05 (1) (a) 5. or a purchase of forfeited or creditable service under s. 40.02 (17) or 40.25 (6) (a) or (7) (a).

SECTION 45. 40.73 (3) (a) of the statutes is amended to read:

40.73 (3) (a) A death benefit may be paid as a beneficiary an annuity for the life of the beneficiary, if the amount of the death benefit is sufficient to provide a beneficiary annuity in the normal form at least equal to the amount determined under s. 40.25 (1) (a) and the beneficiary or the participant has elected to have the death benefit paid as a beneficiary annuity.

SECTION 46. 40.73 (3) (e) of the statutes is amended to read:

40.73 (3) (e) Any beneficiary who is eligible to receive a beneficiary annuity may elect to receive the annuity in any of the optional annuity forms provided for retirement annuities, other than an annuity under s. 40.24 (1) (c) or any annuity payable over the joint life expectancies of the beneficiary and another person.

SECTION 47. 40.86 (intro.) of the statutes is amended to read:

40.86 Covered expenses. (intro.) An employee-funded reimbursement account plan may provide reimbursement to an employe for only the following expenses that are actually incurred and paid by an employe and that the board determines are consistent with the applicable requirements of the internal revenue code, as defined in s. 71.01 (6):

SECTION 48. 111.91 (2) (k) of the statutes is created to read:

111.91 (2) (k) The definition of earnings under s. 40.02 (22).

SECTION 49. 111.91 (2) (L) of the statutes is created to read:

111.91 (2) (L) The maximum benefit limitations under s. 40.31.

SECTION 50. 111.91 (2) (m) of the statutes is created to read:

111.91 (2) (m) The limitations on contributions under s. 40.32.

SECTION 51. 1995 Wisconsin Act 27, section 1946m is repealed.

SECTION 52. 1995 Wisconsin Act 27, section 9459 (2) (d) is amended to read:

[1995 Wisconsin Act 27] Section 9459 (2) (d) The treatment of section 40.81 (3) of the statutes and the repeal and recreation of sections 40.02 ~~(22) (e)~~ and (25) (b) 8., 40.05 (4) (ag) (intro.), (ar) and (b), (5) (intro.) and (b) 4. and (6) (a) and 40.62 (2) of the statutes take effect on July 1, 1997.

SECTION 53. Appropriation changes.

(1m) APPROPRIATION INCREASE FOR THE DEPARTMENT OF EMPLOYE TRUST FUNDS. In the schedule under section 20.005 (3) of the statutes for the appropriation to the department of employe trust funds under section 20.515 (1) (w) of the statutes, as affected by the acts of 1995, the dollar amount is increased by \$321,200 for fiscal year 1996-97 **to increase the authorized FTE positions for the department by 0.5 SEG project position for the period beginning on July 1, 1996, and ending on June 30, 1998, and 1.0 SEG project position for the period beginning on January 1, 1997, and ending on December 31, 1998,** for the purpose of implementing changes in the Wisconsin retirement system relating to complying with the federal internal revenue code.

SECTION 54. Initial applicability.

(1) PROHIBITED SUBJECTS OF COLLECTIVE BARGAINING. The treatment of section 111.91 (2) (k), (L) and (m) of the statutes first applies to participants, who are affected by a collective bargaining agreement that contains provisions inconsistent with that treatment, on the day on which the collective bargaining agreement expires or is extended, modified or renewed, whichever occurs first.

(2) REPURCHASE OF CREDITABLE SERVICE. The treatment of section 40.05 (1) (a) 7. of the statutes first applies to an amount payable under section 40.02 (17) or 40.25 (6) (a) of the statutes on the date specified by the department of employe trust funds, but not later than January 1, 1997.

(3) LUMP SUM PAYMENTS. The treatment of section 40.25 (7) (a) 1. of the statutes first applies to a participating employe who terminates covered employment on the effective date of this subsection.

SECTION 55. Effective dates. This act takes effect on the day after publication, except as follows:

(1m) The treatment of sections 40.23 (1) (a) 1. and 40.26 (5) of the statutes takes effect on July 1, 1996, or on the day after publication, whichever is later.

(2) The treatment of sections 40.02 (22) (e), 40.31 and 40.32 of the statutes takes effect on January 1, 1997.

**Vetoed
In Part**