

CHAPTER 40

GENERAL TRUST FUNDS FOR PUBLIC EMPLOYEES

| | | | |
|--------|---|-------|--|
| | SUBCHAPTER I | 40 41 | Coverage |
| | PURPOSE AND STRUCTURE OF FUNDS | 40 42 | Financial participation |
| 40 01 | Public employe trust fund | 40 43 | Rules |
| 40 02 | Contractual services | | SUBCHAPTER VIII |
| 40 03 | Records | | JOINT BENEFIT PLAN PROVISIONS |
| 40 06 | Retirement investment trusts. | 40 50 | Definitions |
| | SUBCHAPTER II | 40 60 | Disposition of inactive accounts |
| | GROUP INSURANCE | 40 61 | Benefit corrections |
| 40 10 | Group insurance board | 40 62 | Late reports and payments. |
| 40 11 | Definitions | 40 65 | Additional contributions; method of payment. |
| 40 12 | Group insurance provided. | 40 70 | Distribution of annuity reserve surpluses |
| 40 13 | Amount of life insurance. | 40 75 | Payments of benefits to minors and incompetents |
| 40 14 | Health insurance defined; contracts. | 40 80 | Military leave credits. |
| 40 145 | Integration of state group health insurance with federal plan for aged. | 40 84 | Intrastate retirement reciprocity |
| 40 146 | Income continuation insurance. | 40 85 | Termination of variable participation |
| 40 15 | Payment of premiums for life insurance. | 40 86 | Disability annuity options |
| 40 16 | Payment of premiums for health insurance. | 40 87 | Credit reinstated under Wisconsin retirement system. |
| 40 165 | Graduate assistant's health insurance coverage | | SUBCHAPTER IX |
| 40 17 | Premium deductions | | EMPLOYMENT OF RETIRED EMPLOYEES |
| 40 18 | Cancellation and termination of life or health insurance. | 40 90 | Definitions. |
| 40 19 | Retired employes. | 40 91 | Wages reduced to offset retirement benefit. |
| 40 20 | Local employes: group life insurance. | 40 92 | Retirement benefit; notice |
| 40 21 | Coverage for new employes. | 40 93 | Enforcement |
| 40 23 | Payments exempt from process | 40 94 | Department; powers |
| 40 24 | Disposition of surplus | 40 95 | Reduction not to affect benefit programs. |
| 40 25 | Payment of administrative expenses. | 40 96 | Applicability. |
| 40 26 | Depositing of moneys. | | |
| | SUBCHAPTER VI | | |
| | SOCIAL SECURITY FOR PUBLIC EMPLOYEES | | |
| 40 40 | Social security for public employes; definitions. | | |

NOTE: Chapter 280, Laws of 1975, provides:

"SECTION 1. Declaration of policy. As a means of assuring the continued orderly development, economical administration and sound financing of state administered public employe retirement programs, the Wisconsin retirement fund, the state teachers retirement system and the Milwaukee teachers retirement fund are merged into one public employe retirement system to be known as the Wisconsin retirement system.

SECTION 2. Implementation of merger. (1) The Wisconsin retirement system shall be under the direction and supervision of the employe trust funds board created under section 15.16 of the statutes.

(2) The employe trust funds board is directed to prepare and submit to the legislature when it convenes in January 1977, a bill to reconcile the statutes with the merger policy declared in this act. Such bill shall standardize to the maximum extent the technical provisions of the benefit programs of the merged funds and systems. Until such bill is enacted into law and becomes effective, the system shall be administered so that the accounts and records of each of the former funds or systems which are merged under this act are maintained separately and so that the contributions, benefits and other rights and obligations of each member or beneficiary are essentially the same as if the merger directed by this act had not taken place.

(3) The employe trust funds board shall succeed to and be vested with the rule-making authority and operational planning functions of:

(a) The board of trustees of the Wisconsin retirement fund.

(b) The board of trustees of the state teachers retirement system.

(c) The board of trustees of the Milwaukee teachers retirement fund.

(4) All rules of the boards of trustees of the Wisconsin retirement fund, state teachers retirement system and Milwaukee teachers retirement fund which are in effect on the effective date of this act shall become rules of the employe trust funds board and shall remain in effect until amended or repealed by the employe trust funds board.

(5) Except as otherwise provided in this act the Wisconsin retirement fund board, the state teachers retirement board and the Milwaukee teachers retirement board shall continue to exercise the program responsibilities assigned to each of such boards under section 15.161 of the statutes."

SUBCHAPTER I

PURPOSE AND STRUCTURE OF FUNDS

40.01 Public employe trust fund. (1) PURPOSE. A "public employe trust fund" is created to aid public employes in protecting themselves and their beneficiaries against the financial hardships of old age, disability, death, illness and accident, thereby promoting economy and efficiency in public service by facilitating the attraction and retention of competent employes, by enhancement of employe morale and by providing for the orderly and humane departure from service of employes no longer able to effectively perform their duties. Such fund shall be administered by the department of employe trust funds (hereinafter in this section referred

Editor's Note

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to as "department") and all statutes relating to such fund shall be construed liberally in furtherance of the purposes set forth in this subsection.

(2) **ACCOUNTS.** The following separate accounts and such additional accounts as determined by the department to be useful in achieving the fund's purposes, shall be maintained within the public employe trust fund:

(a) An administrative account from which administrative costs of the department, including charges for services performed by others, shall be paid. Except as otherwise provided in this section, investment income of this fund and moneys received for services performed or to be performed by the department shall be credited to this account. The secretary of employe trust funds shall estimate the administrative costs to be incurred by the department in each fiscal year and shall also estimate the investment income which will be credited to this account in such fiscal year. The estimated administrative costs less the estimated investment income shall be equitably allocated, with due consideration being given to the derivation and amount of the investment income, to the several funds and accounts administered by the department. In determining the amount of such allocation adjustments shall be made for any difference in prior years between the actual administrative costs and investment income from that originally estimated under this paragraph. An amount equal to such adjusted allocated costs shall be transferred to this account from moneys available for such purposes under the provisions of the respective fringe benefit plans administered by the department.

(b) A group life insurance account to which shall be credited moneys received from operations of the group life insurance plans under subch. II for life insurance premiums, as dividend or premium credits arising from operation of life insurance plans and from investment income on any reserves established in the public employe trust fund for life insurance purposes. Premium payments to life insurers shall be charged to this account. This paragraph shall not be deemed to prohibit the direct payment of premiums to insurers when appropriate administrative procedures have been established for such direct payments.

(c) A group health insurance account to which shall be credited moneys received from operation of the group health insurance plans under subch. II for health insurance premiums, as dividend or premium credits arising from operation of health insurance plans and from investment income on any reserves established in the public employe trust fund for health insurance purposes. Premium payments to health insurers shall be charged to this account.

PUBLIC EMPLOYE TRUST FUNDS 40.02

This paragraph shall not be deemed to prohibit the direct payment of premiums to insurers when appropriate administrative procedures have been established for such direct payments.

(d) A social security account to which shall be credited all moneys received pursuant to subch. VI from employe and employer social security contributions including any penalties for late transmission of moneys or reports. All disbursements pursuant to subch. VI and s. 20.515 (1) (x) shall be charged to this account.

History: 1971 c 214; 1975 c 39 s 734; 1979 c 102 s 236 (4).

40.02 Contractual services. (1) The employe trust funds board shall select and retain an actuary or an actuarial firm, under one or more contractual agreements which shall run to the department of employe trust funds, for the purpose of performing all actuarial services which are necessary for the operation and control of each of the insurance and benefit programs under this chapter and chs. 41 and 42. The board shall:

(a) Determine the requirements for and qualifications of the actuary or the actuarial firm retained.

(b) Determine the terms and conditions of each such contractual agreement, and the time any such agreement shall be in force.

(c) Determine the procedure for the selection of an actuary or an actuarial firm.

(2) The board may employ or select such medical, legal and other independent contractors as are required for the administration of the department and shall determine the qualifications and procedures for their selection.

(3) The board shall direct the secretary of employe trust funds to sign on behalf of the department any contractual agreement approved by the board.

(4) The actuary or actuarial firm retained under sub. (1) shall be the technical advisor of the employe trust funds board and of all the boards attached to the department and in addition to general advice shall:

(a) Make a general investigation at least once every 3 years of the experience of the retirement funds and systems under chs. 41 and 42 as to mortality, disability, retirement, separation, interest and employe earnings rates and certify, as a result of each such investigation, the tables to be used for computing annuities and benefits and for determining the premiums for disability purposes, and the prescribed rate of interest.

(b) Determine the proper rates of employer contributions under this chapter and chs. 41 and 42.

40.02 PUBLIC EMPLOYE TRUST FUNDS

892

(c) Make an annual valuation of the liabilities and reserves required to pay both present and prospective benefits under chs. 41 and 42.

(d) Compute and certify the actuarial figures on the financial statements of the department.

(e) Certify, when so requested, the amount of any annuity or benefit granted by the department.

(f) Advise the employe trust funds board on any matters of an actuarial nature affecting the soundness of any of the trust funds or requiring any changes for more satisfactory operation.

(5) The secretary:

(a) Shall employ or select such administrative, clerical and other employes as are required for the administration of the department.

(b) May require any employer to distribute to its employes any materials which are determined to be necessary for the efficient administration of the benefit programs provided by this chapter or chs. 41 or 42.

History: 1971 c. 125; 1977 c. 418; 1979 c. 221.

40.03 Records. (1) Individual personal information in the records of the department of employe trust funds is not a public record and shall not be disclosed, except as may be required for the proper administration of the department, unless:

(a) Such information is requested by the person whose record contains such information or by the duly authorized representative of such person;

(b) Such information is requested by a public officer or employe for use in the discharge of his official duties; or

(c) Such information is required to be disclosed pursuant to a court order duly obtained upon a showing to the court that such information is relevant to a pending court action.

(2) Notwithstanding sub. (1), medical records may be disclosed only when a disability application denial is appealed under ch. 227 or pursuant to a court order duly obtained upon a showing to the court that such information is relevant to a pending court action.

History: 1971 c. 214; 1975 c. 189.

40.06 Retirement investment trusts. (1) There are created as separate funds a fixed retirement investment trust and a variable retirement investment trust under the jurisdiction and management of the investment board for the purpose of managing the securities of all the retirement funds specified in chs. 41 and 42. Within the fixed retirement investment trust there shall be maintained a transaction amortization account and a current income account, and such other accounts as are established by the investment board or the employe trust funds

board. Administrative costs determined in accordance with s. 40.01 shall be paid from the fixed retirement investment trust and the variable retirement investment trust prior to any distribution therefrom.

(2) At such time as the employe trust funds board determines, all of the securities held by the retirement funds provided for in chs. 41 and 42 shall be transferred, at values determined by the employe trust funds board to be equitable to each fund as of the date of transfer (with appropriate provision, if necessary, for amortizing over a period of years any one-time adjustments required to achieve such equity) to the appropriate trust created under sub. (1) together with such amounts of cash as may be required to provide each contributing fund an equity in each of the trusts created under sub. (1) which may be expressed in terms of even thousands of dollars. Thereafter the department of administration shall make such subsequent transfers of money between the individual funds and the trusts created under sub. (1) as are necessary to meet the current cash requirements of the individual funds, such transfers to be made on the basis of even thousands of dollars, and shall furnish to the department of employe trust funds and to the investment board such information with respect to daily balances of individual funds within the trusts created under sub. (1) as are required.

(3) All earnings, profits or losses of the fixed retirement investment trust and the net gain or loss of the variable retirement investment trust, less transfers made in accordance with s. 40.01, shall be distributed to each participating fund in the same ratio as each such fund's average daily balance within the respective investment trust bears to the total average daily balance of all participating funds in that investment trust. The distribution may be made at such times as the department of employe trust funds determines, but must be made at least semiannually on June 30 and December 31. Any such distribution shall be determined as follows:

(a) For the fixed retirement investment trust the amount to be distributed as provided herein, on a semiannual basis, shall be 3.5% of the then balance of the transaction amortization account plus the then balance of the current income account. For any distribution on other than a semiannual basis, the percentages specified herein shall be changed proportionately.

(b) For the variable retirement investment trust the amount of net gain to be distributed for any period shall be the excess of 1) the increase within the period in the value of the assets of the trust resulting from income from the investments thereof and from the sale or appreciation in value of any investment thereof, over 2) the

decrease within the period in the value of such assets resulting from transfers made pursuant to s. 40.01, and from the sale or the depreciation in value of any investments thereof. If the decrease exceeds the increase the amount of such excess shall be the net loss of the trust for the period.

(4) The assets of each of the investment trusts shall be mingled in one fund, and no particular contributing fund shall have any right in any specific item of cash, investment or other property other than an undivided interest in the whole as provided herein. The department of administration shall maintain such records as may be required to account for each contributing fund's share in the corresponding investment trust.

(5) The department of employe trust funds shall advise the investment board and the state treasurer as to the limitations on the amounts of cash to be invested in order to maintain such cash balances as are deemed advisable to meet current annuity, benefit and expense requirements.

History: 1973 c. 137

SUBCHAPTER II

GROUP INSURANCE

40.10 Group insurance board. (1) **PURPOSE.** Group life and group health insurance accounts are created as provided in s. 40.01 for the purpose of providing state employes with group life insurance in amounts based upon their annual earnings and group health insurance, including income continuation insurance, for employes and their dependents under plans contributed to and conducted by the state through a group insurance board to improve morale and efficiency in state service.

(2) **METHOD.** The group insurance provided under this subchapter shall be administered in conformity with the rules prescribed by the board.

(a) The group insurance board may take any action deemed advisable and not specifically prohibited, or delegated to some other governmental agency, to carry out the purpose of this subchapter, including, without limitation because of enumeration, rules and actions relating to:

1. Eligibility of active and retired employes to participate, and giving an option not to participate and to withdraw.

2. The payments by employes for such insurance.

3. The time that changes in coverage and payments shall take effect.

4. The terms and conditions of the insurance contract or contracts.

5. The date such program shall be effective.

7. The kind, amount, and conditions pertaining to benefits available to employes as a result of dividends or premium refunds.

8. The time that coverage shall be effective.

(b) The board shall on behalf of the state enter into a contract with one or more insurers authorized to do an insurance business in this state. The group life and health insurance contract may be of the type which requires payment of premiums which are known to be sufficient to pay losses, costs, benefits and expenses incurred in its operation and which may permit dividends or premium credits to be applied as provided in s. 40.24, or of a type which requires lower initial premiums with the probability of greatly reduced or nonexistent dividends or rate credits.

(c) The group life and health insurance accounts in the public employe trust fund shall be construed to be trusts and each member of the group insurance board shall be deemed a trustee.

(3) **OTHER GROUP PLANS.** In addition to the group insurance plans specifically provided in this subchapter, the group insurance board may provide other group insurance plans for public employes and their dependents. The entire premium for such additional plans shall be paid by employe contributions and the terms of such group insurance contracts shall provide that the employer shall not be liable for any obligations accruing due to the operation of such plans, unless the employer specifically provides otherwise.

(4) **GROUP INSURANCE.** The board shall not enter into any new agreements to modify or expand group insurance coverage which would materially affect the level of premiums required to be paid by the state or its employes, or the level of benefits to be provided under any such coverage except for any such changes approved under ss. 111.92 and 230.12 by the joint committee on employment relations and the legislature or as otherwise required by law.

History: 1971 c. 125, 214; 1973 c. 20; 1975 c. 39; 1975 c. 223 s. 28; 1977 c. 196 s. 131; 1979 c. 102.

40.11 Definitions. In this subchapter:

(1) "Board" means the group insurance board.

(2) "Employe" means any person who:

(a) Receives earnings as payment for personal services rendered to or for the benefit of the state, and who:

1. Has been employed for not less than 6 months in a state position included under the Wisconsin retirement fund or the state teachers retirement system, and is currently a participant in or a member of such fund or system; or

40.11 PUBLIC EMPLOYE TRUST FUNDS

894

2. Is a member or employe of the legislature, a state constitutional officer, a justice of the supreme court, a court of appeals judge, a circuit judge or the chief clerk or sergeant at arms of the senate or assembly.

(b) The definition of employe shall not exclude any individual who, while insured for the group life or health insurance, is retired on an immediate annuity, or is retired on a disability annuity. In the case of group life insurance, however, except in case of disability annuity, such retired employe shall have been a state employe for at least 20 years or have reached his normal retirement date, as determined for annuity computation purposes.

1. For the purposes of this subchapter the term retired employe shall include the surviving spouse of an employe who is currently covered by health insurance at the time of death of the employe, and the spouse shall have the same right of health insurance coverage as the deceased employe but without state contribution, under rules adopted by the board.

2. For the purposes of this subchapter the term retired employe shall include the surviving spouse of a retired employe who is currently covered by health insurance at the time of death, and the spouse shall have the same right of health insurance coverage as the deceased retired employe but without state contribution, under rules adopted by the board.

(c) No statutory provision shall be construed to exclude any person otherwise eligible under this subchapter because such employe is not a full-time civil service employe.

(d) Subsequent to the effective date of participation by the state or any employer, no person who has attained age 70 at the time of becoming initially eligible under this subchapter shall be included, but this paragraph does not exclude from participation in the state's group health and accident insurance plan any member of the legislature who has attained age 70.

(e) For the purposes of this subchapter "employe" includes the blind employes of the Wisconsin workshop for the blind under s. 47.06 as of the beginning of the calendar month following completion of 1,000 hours of service, but such employes shall not be eligible for cessation of premiums because of disability directly or indirectly attributable to blindness. Any such employe may convert insurance coverage only once under the contract.

(f) For the purpose of providing group health insurance coverage in this subchapter "employe" includes any person appointed as a visiting faculty member as defined by s. 42.35 (2) and (3), in the university of Wisconsin system who has been employed for not less than 6 months:

(g) For purposes of this subchapter a person who becomes an employe of the state of Wisconsin pursuant to chapter 90, laws of 1973, section 546, as affected by chapter 333, laws of 1973, section 189b, may use service as a member of the employe's retirement system of the county of Milwaukee to meet any service requirement under this subchapter.

(3) "Immediate annuity" means an annuity under the Wisconsin retirement fund or the state teachers retirement system which begins to accrue not later than one month after termination of employment.

(4) "Disability annuity" means the same as prescribed in s. 41.13, 42.242 (4), 42.245 (3), 42.49 (9) or 66.191.

(5) "Earnings" means the total salary or wages paid to an employe by the state during the previous calendar year. If employment and compensation are not continuous during such period, the earnings shall be determined by rule. For persons covered initially the earnings shall be a projection on an annual basis of the compensation at the time of coverage, which shall continue until there is coverage during a calendar year.

(6) "Dependent" means the spouse of an employe or an employe's unmarried child as defined by board rule.

History: 1971 c. 214 ss. 7 to 9, 148; 1973 c. 90, 151, 333; 1975 c. 94; 1977 c. 187; 1979 c. 221.

40.12 Group insurance provided. (1)

Each employe shall be insured in accordance with this subchapter, unless such employe executes and files with his employing office a written waiver of any such coverage, within the time limit fixed by rule, which shall be transmitted forthwith to the director, or the board may provide a different method of enrollment.

(2) Any employe who has filed a waiver pursuant to sub. (1), or any employe whose insurance terminates pursuant to s. 40.18 (1) by reason of filing such a waiver, shall not thereafter become insured unless prior to his attainment of age 50 and after at least one year has elapsed since the effective date of such waiver, he furnishes evidence of insurability satisfactory to the insurer, at his own expense. If such evidence is approved, such employe shall become insured from the date of such approval.

(2m) Notwithstanding sub. (2), if an employe fully terminates all coverage under the benefit plans provided under chs. 40, 41 and 42 and closes all accounts thereunder and does not become a member, participant, employe or annuitant under any such plan for a period of one full calendar year, any previously filed waiver shall no longer apply should the individual again become an employe after April 9, 1976.

(3) An employe shall be deemed to have filed a waiver upon becoming eligible for group life insurance if during the 6 months subsequent to becoming eligible he makes no required contribution toward premiums. Such waiver shall not preclude the employe from obtaining group life insurance coverage after such 6 months have elapsed if contributions were omitted as a result of employer error and the employe files with the group insurance board a written request to withdraw the constructive waiver within 30 days after the employe receives written notice of the error. No evidence of insurability for such employe shall be required and such coverage shall be effective on the date such request is received by the board.

History: 1971 c. 125; 1975 c. 189

40.13 Amount of life insurance. (1) Except as provided in sub. (2), (7) or (9), the amount of group life insurance of an employe shall be \$1,000 of insurance for each \$1,000 or part thereof of his earnings, but not in excess of any limitation of amount that may otherwise be provided by law.

(2) Except as provided by sub. (3), the amount of life insurance provided under sub. (1):

(a) For an insured active employe on and after the date the employe attains age 70 is 25% of the amount the employe is otherwise eligible for under sub. (1).

(b) For an insured retired employe on and after the date the employe attains age 65 is:

1. If the employe terminates employment prior to attaining age 70, 75% of the amount in force immediately prior to termination of employment if the employe is 65 years of age, 50% of that amount if the employe is 66 years of age and 25% of that amount if the employe is 67 years of age or older.

2. If the employe terminates employment on or after the date the employe attains age 70, the amount specified under par. (a) on the date the employe terminates employment.

(3) Notwithstanding sub. (2), the maximum reduction in the amount of insurance for any insured state employe who attains age 65 on or after July 1, 1972, shall be 50%, but this subsection does not apply to teachers, as defined in s. 42.20, in the unclassified service of the state until July 1, 1977. Any municipal employer may elect by resolution to extend this additional amount of coverage to all of its eligible employes. The board shall determine the method of administration and the procedure for collection of premiums and municipal employer costs.

(4) Except as provided by subs. (2) and (3), the amount of life insurance of an employe who prior to age 65 retires on immediate annuity who

has been a state employe for not less than 20 years or who has reached his or her normal retirement date, as determined for annuity computation purposes, shall be the same as if the employe had not retired and his or her earnings had continued as at the time of his or her retirement.

(5) Except as provided by subs. (2) and (3), the amount of insurance of an employe who retires on disability annuity shall be the same as if he or she had not retired and his or her earnings had continued as at the time of his retirement.

(6) Except as provided by subs. (2) and (3), during a period of disability in which premiums are waived under the terms of the insurance contract the amount of insurance shall be the same as if the employe had not become disabled and the employe's earnings had continued at the amount thereof at the time of becoming disabled, and the contract may provide that such insurance continues during the continuance of such disability even if the person ceases to be an employe.

(7) An insured employe who is still eligible may elect that the life insurance in effect during the previous year shall not be reduced during subsequent years of employment with the same employer as defined in s. 41.02 (4). The right to so elect shall apply only where the previous year's employment was with the same employer as at the time of such election. Such election shall be made pursuant to rules established by the board. This subsection is subject to the limitations of sub. (2).

(8) In addition to the insurance provided under sub. (1), insurance may be provided against accidental death and dismemberment as defined by the board in accordance with benefit schedules established by the board.

(9) Any state employe insured under sub. (1) may elect an additional amount of group life insurance equal to either 50% or 100% of earnings rounded to the next higher \$1,000 if earnings are not in even \$1,000 increments. Additional insurance provided under this subsection terminates:

(a) On the date an insured active employe attains age 70.

(b) On the date an insured retired employe attains age 65.

(c) On the date an insured active employe who is 65 years of age or older and under 70 years of age terminates employment.

(10) Notwithstanding s. 40.20 (3), the optional group insurance provided under sub. (9) shall be available only to eligible state employes.

History: 1971 c. 125; 1971 c. 214 ss. 10, 148; 1973 c. 51; 1977 c. 45; 1979 c. 221

40.14 PUBLIC EMPLOYE TRUST FUNDS

896

40.14 Health insurance defined; contracts. (1) In this subchapter, "health insurance" means contractual arrangements with one or more 3rd parties for the full or partial payment, which may include indemnity or service benefits or both, of the financial expense incurred as a result of the injury or illness of an insured state employe or insured annuitant or of an insured dependent of such person. Such expense may include hospitalization, surgery and medical care, as well as ancillary items or services. Contracts for payment of the foregoing, plus other related benefits which may be negotiated by the board, shall be made with insurers authorized to do a disability business in this state or with corporations under ch. 613.

(2) The board by rule shall determine the possible coverage when there is or has been state employment by more than one member of a family.

(3) The board shall provide a plan or plans of standard health insurance coverage which shall include the type of coverage normally referred to as "major medical insurance" and may provide, under the contract or contracts, other coverages optional with each eligible employe and at his expense.

History: 1975 c. 223 s. 28; 1975 c. 372, 422; 1979 c. 102

40.145 Integration of state group health insurance with federal plan for aged. It is the policy of the legislature that health insurance benefits under this subchapter be integrated with benefits under federal plans for hospital and health care for the aged. The board is directed to integrate the state health insurance with federal plans for hospital and health care for the aged, and the board shall adopt appropriate rules which, notwithstanding any other provision of this subchapter, may establish exclusions and limitations with respect to benefits and different rates for persons eligible under such federal plans for hospital and health care for the aged in recognition of the utilization by persons within the age limits eligible under the federal program. As part of such integration plan the board may out of premiums collected under this subchapter pay premiums for the federal health insurance for persons covered under state health insurance. Such plan may include special provisions for spouses and other dependents covered under state health insurance where one spouse is eligible under federal plans for hospital and health care for the aged but the others are not eligible because of age or otherwise.

40.146 Income continuation insurance.

(1) As used in this subchapter, "income continuation insurance" means full or partial payment

of the financial loss of earnings incurred as a result of the injury or illness of an insured state employe.

(2) The board shall provide a plan of standard income continuation insurance through contracts negotiated with insurers authorized to do disability insurance business in this state or through other means determined by the board.

(3) Each employe shall be insured in accordance with this subchapter, unless such employe executes and files with his employing office a written waiver of any such coverage, within the time limit fixed by rule, which shall be transmitted forthwith to the director, or the board may provide a different method of enrollment.

(4) There shall be withheld from the earnings payment of each insured employe the amount of premium necessary for such coverage and at the time fixed by the board. Such withholdings shall be remitted by the respective departments or agencies in which such employes are employed, in the manner and within the time limit fixed by rule.

(5) The board shall establish by rule the provisions of a short-term plan with a benefit duration of 2 years and a long-term plan covering injury or illness of indefinite duration.

(6) The state shall contribute toward the payment of premiums for the short-term income protection insurance under this section an amount equal to 100% of the gross premium for any insured employe who accumulates 10 days of sick leave or more each year or who has accumulated 65 days of sick leave or more. Sick leave accumulation shall be determined in accordance with s. 230.35 (2) and the rules of the board.

(7) (a) The state shall contribute toward the payment of premiums for the long-term income continuation insurance under this section an amount equal to 50% of the gross premium for any insured employe who has accumulated at least 65 days or more of sick leave.

(b) The state shall contribute 75% of the gross premium if an insured employe has accumulated at least 91 days or more of sick leave.

(c) The state shall contribute 100% of the gross premium if an insured employe has accumulated over 130 days of sick leave.

(8) (a) The board shall establish by rule the elimination periods necessary for both the short and long-term plans.

(b) Employes insured under either the short or long-term plan shall be covered under these plans upon exhaustion of accumulated sick leave and the elimination period required under the respective policies.

(9) (a) Any insured employe who has, as a result of disability or illness, exhausted his accu-

mulated sick leave and has been covered under the long-term plan shall upon his return continue to be covered under the plan regardless of his accumulated sick leave status.

(b) The state's contribution toward the payment of premiums under this subsection shall be 50% of the gross premium until the employee is eligible to qualify under sub. (7) (b) or (c).

(10) State contributions for the payment of premiums under this section shall be made for all employees who meet the requirements of subs. (6), (7) and (9) with the exception of teachers, as defined in s. 42.20, in the unclassified service of the state.

(11) Effective July 1, 1974, teachers, as defined in s. 42.20, in the unclassified service of the state employed by the board of regents of the university of Wisconsin system, shall have the benefit of income continuation insurance under a sick leave program as adopted by the board of regents of the university of Wisconsin system under ch. 227. The sick leave program may take into account previous practices and may permit reasonable crediting of sick leave for previous service in the system. With regard to income continuation insurance for such employees:

(a) The state shall contribute an amount equal to 100% of the gross premium for any employee who has more than one year of service and who elects to take a 130-day waiting period.

(b) The state shall contribute an amount equal to the gross premium for a 130-day waiting period for any other employee with more than one year's service who elects a shorter waiting period with the balance of the premium to be paid by the employee.

(c) Employees covered under the board of regents program with less than one year's service shall be allowed to purchase income continuation insurance at their own expense.

(d) Insofar as applicable subs. (1), (2), (3), (4), (5), (8) and (9) (a) shall apply.

History: 1971 c. 125, 336; 1973 c. 90; 1977 c. 196 s. 131; 1979 c. 102.

40.15 Payment of premiums for life insurance.

(1) There shall be withheld from the earnings payment of each insured employee under the age of 70 and from retirement benefits paid to annuitants under age 65 pursuant to sub. (4) the sum approved by the board, which shall not exceed 60 cents for each \$1,000 of group life insurance under this subchapter, based upon the last amount of insurance in force during the month for which the earnings are paid. The equivalent premium may be fixed by the board if the annual compensation is paid in other than 12 monthly instalments. The withholdings shall be remitted to the board by the respective departments or agencies in which the employees are

employed and by the respective retirement systems for insured annuitants, in the manner and within the time limit fixed by rule.

(2) Beginning with the month in which an insured active employee reaches his or her 70th birthday, no withholdings from his or her earnings may be made under this section. Withholdings or employee contributions for insured retired employees shall cease on the date the employee attains age 65 or the date the employee terminates employment, whichever is later. Withholdings shall not be made from the earnings of an insured employee during a period of disability in which premiums are waived under the terms of the insurance contract.

(3) The premium for group life insurance for an employee retired on a disability annuity, or determined under the insurance contract to be disabled, is waived effective with the month commencing after earnings cease except this waiver does not apply to any month commencing prior to the date the employee attains age 65 during which the employee is not disabled. The disabled employee shall make premium contributions for any month for which earnings are paid by the state.

(4) An insured employee who is retired and who is otherwise eligible shall continue to be covered if:

(a) The premium payment is deducted from the appropriate annuity payroll as authorized by s. 41.41, 1971 stats., or by s. 41.22 (1) (a) or 42.52, if the annuity is sufficient;

(b) The employee makes direct payments to continue insurance coverage; or

(c) The employer of the retired employee pays, on behalf of the employee, the premium payment directly to the department, according to procedures established by the department.

(5) The state shall contribute toward the payment of premiums under this section an amount, which together with the employee's contribution, will equal the gross monthly premium for such employee's insurance. Any contribution which may be required from the state shall be made in accordance with s. 20.865 (1) (d).

(6) The full amount of the premium shall be remitted to the insurer substantially in accordance with s. 20.921.

History: 1971 c. 214; 1973 c. 151; 1979 c. 34, 102, 221.

40.16 Payment of premiums for health insurance.

(1) There shall be withheld from the earnings payment of each insured employee and from the retirement benefit of each insured retired employee (if the annuity is sufficient) the amounts of premium and at the time fixed by the board. Such withholdings shall be remitted by the respective departments or agencies in which

40.16 PUBLIC EMPLOYE TRUST FUNDS

898

such employes are employed, and by the respective retirement systems from which insured annuitants are paid, in the manner and within the time limit fixed by rule.

(2) The state shall contribute toward the payment of premiums for health insurance under this section an amount equal to 90% of the gross premium for any insured employe who works for more than 1,043 hours per year, and who is not an annuitant or who is not a retired employe qualifying for continued insurance coverage under s. 40.19 (2), and his or her dependents for the standard health insurance coverage determined by the board. The state shall contribute 45% of the premium for standard health insurance coverage under this section for insured employes who work at least 600 but less than 1,044 hours per year.

(2m) Notwithstanding sub. (2), effective on July 1, 1977, the state shall contribute an amount equal to 90% or the following applicable dollar amounts, whichever is greater, toward the health insurance premium for each insured employe:

- (a) \$84.10 per month for family coverage.
- (b) \$34.02 per month for single coverage.
- (c) \$41.02 per month for family coverage where 2 participants are eligible for federal medicare.
- (d) \$54.62 per month for family coverage where there is one participant eligible for federal medicare.
- (e) \$20.60 per month for individual coverage when the subscriber is eligible for federal medicare.

(3) Health insurance shall be continued after retirement for any eligible employe who has not elected to discontinue such coverage and the full premium therefor shall be deducted from credits earned under ss. 36.30 (1) and (2) and 230.35 (2) and (2m) until exhausted, and then from annuity payments, if the annuity is sufficient. The board shall provide for the direct payment of premiums by the annuitant to the insurer if the premium to be withheld exceeds the annuity payment.

(4) Notwithstanding ss. 40.11 (2) (a) 1 and 42.35 (3), any person appointed as a visiting faculty member in the university of Wisconsin system who has been employed by such system for not less than 6 months shall be eligible for health insurance and shall be considered an insured employe for the purposes of s. 40.16.

History: 1971 c. 125, 336; 1973 c. 90; 1975 c. 88; 1977 c. 44, 45; 1977 c. 196 ss. 77m, 131; 1979 c. 221.

40.165 Graduate assistant's health insurance coverage. The board of regents of the university of Wisconsin system, working with the group insurance board, shall establish a

health insurance plan for graduate assistants within the system who are employed on a one-third full-time basis, or more and for other such employes-in-training who are employed on at least a one-third full-time basis as are designated by the board of regents of the university of Wisconsin system. The group insurance board shall take any action deemed advisable and not specifically prohibited or delegated to some other governmental agency to carry out the purpose of this section. The state contribution toward such coverage shall be not more than the percentage of premium paid by the state for employe's health insurance coverage under s. 40.16 (2).

History: 1973 c. 90; 1975 c. 224

40.17 Premium deductions. For the insurance premium withholding purposes of this subchapter an insured state employe on more than one state payroll or paid from more than one appropriation shall have premium deductions made only under that department, agency or appropriation from which he receives the greater portion of his earnings. For purposes of state contributions s. 20.904 shall be applicable.

40.18 Cancellation and termination of life or health insurance. (1) An insured employe may at any time cancel his life or health insurance by filing a waiver of such coverage with his employing office; similarly an insured retired employe may at any time cancel his life or health insurance by filing a waiver of such coverage with the office of his retirement system. Such waiver shall be transmitted forthwith to the board. Such waiver shall be effective and such insurance shall cease at the end of the calendar month which begins after the waiver is received by such office.

(2) The life and health insurance shall terminate as provided in the contract or contracts therefor, which contract or contracts shall also provide an option for an employe to convert insurance coverage upon termination of employment if covered by such insurance during the entire 6 months preceding termination or if covered by such insurance from the initial effective date established under s. 40.20 (4), to the date of termination, and provided that such employe has been employed by the same employer for 6 months prior to termination.

(3) The board may provide for the continuance or suspension of insurance coverage during any month in which no earnings are received and during any leave of absence or period of disability as defined by the board.

(4) (a) "Union service leave" for the purpose of this subsection, means that period of absence from state employment commencing on

the date a state employe commences a leave of absence for the purpose of serving in a position with a labor organization as defined by s. 111.81 (9), and terminating on the date that leave of absence terminates or on the date that service with that labor organization terminates whichever first occurs.

(b) A state employe may continue life, health and income insurance coverage provided under this subchapter for state employes during any union service leave except the cost for premium payments shall be entirely the responsibility of the former state employe on union service leave. The board shall promulgate rules providing for the manner in which those costs shall be paid.

(c) The board shall promulgate rules determining the amount of insurance and extent of coverage provided and amount of premiums required during a union service leave, except the amount of insurance and extent of coverage shall be not less than that in effect immediately preceding the commencement of the union service leave.

History: 1971 c. 214 s. 148; 1977 c. 418

40.19 Retired employes. (1) To be eligible for continuance of insurance as a retired employe, an insured employe must a) be entitled to a disability annuity or b) be entitled to an immediate annuity and must meet all requirements for annuity including filing of application where necessary whether or not final administrative action has been taken. In the case of group life insurance, however, except in case of disability annuity, such retired employe shall have been a state employe for at least 20 years, or have reached his normal retirement date, as determined for annuity computation purposes.

(2) The requirement for an immediate annuity shall be waived for any person attaining age 65 who has an aggregate of 10 year's service. This shall also be in effect with respect to group life insurance for all persons who are annuitants on December 1, 1961, and who were insured under the group life insurance program at the time of retirement.

(3) The board may by rule provide that persons who are otherwise eligible and who retire during the calendar year 1959 or subsequently may be eligible.

History: 1971 c. 214.

40.20 Local employes: group life insurance. (1) The board shall make the group life insurance provided under this subchapter available to any employer for the purpose of providing the employes with group life insurance in amounts based upon their annual earnings under a plan contributed to by the employer, thereby improving morale and efficiency in the

public service. The board shall have the option of providing such insurance under a separate contract. Any insurer authorized to sell life insurance in this state may provide such insurance. For the purposes of this section, "employer" has the meaning designated in s. 41.02 (4) except that a city school district shall be considered a separate employer.

(2) The board may by rule extend the coverage of group life insurance to any such employer with respect to employes who are participants in a pension or retirement plan underwritten by a private insurer.

(3) All provisions of this subchapter pertaining to the state and to state employes with respect to group life insurance shall be applicable to such employers as act to be included hereunder and to the employes thereof. Service for the state and for each employer shall be treated independently, including the 20-year requirements in s. 40.19 (1), except that an aggregate of such service under the state teachers' retirement system shall meet the requirement and except that service for a predecessor employer shall be treated as service for the participating employer.

(4) The governing body of any employer may elect to provide group life insurance under this subchapter for the employes by the adoption of a resolution in the form prescribed by the board. A certified copy of the resolution shall be filed with the board and if received on or before November 15 in any year shall be effective as of the beginning of the ensuing calendar year. For purposes of this section, the governing body of a city school district is the city school district board.

(5) Except as provided by sub. (5m), whenever any school district is created, the territory of which includes more than one-half of the last assessed valuation of a school district which was an employer included under this subchapter at the time of such creation, the school district so created shall automatically be included under this subchapter from its inception in accordance with rules adopted by the board.

(5m) (a) In this subsection:

1. "Dissolved school district" means a school district whose effective date of creation is after September 27, 1978, but prior to February 1, 1979, and whose effective date of dissolution is in 1979.

2. "Original school district" means a school district, or a city operating a city school district, part or all of the territory of which is consolidated into a dissolved school district.

3. "Successor school district" means a school district or city operating a city school district which on the effective date of the dissolution of

40.20 PUBLIC EMPLOYE TRUST FUNDS

900

the dissolved school district assumes substantially the same territory and operates for substantially the same purpose as an original school district.

(b) Subsection (5) does not apply to the creation of a successor school district, effective after July 29, 1979 except as provided by par. (c).

(c) Successor school districts to original school districts which were included under this subchapter at the time they were consolidated into the dissolved school district are included under this subchapter from their inception, unless the successor school district elects to withdraw under sub. (10).

(6) The definition of "employee" shall include:

(a) The personnel of any participating employer as defined in s. 41.02 (5) who meet the requirements of s. 40.11 other than state employment, or who are included under a retirement plan pursuant to subch. IV of ch. 41 or s. 66.80.

(b) In cities of the 1st class and counties having a population of 500,000 or more any person included under a retirement system for such city or county whose current employment or official status has continued for 6 months.

(7) Each employer shall pay the employer cost for its employees pursuant to s. 40.15 (5), and may pay for all employees any part or all of the premium required to be paid by employees pursuant to s. 40.15 (1). If an employer elects to pay the entire premium, the board shall be notified in writing of the date on which such election becomes effective. Following any such election, and notwithstanding s. 40.12 (2), a waiver of insurance filed by any employee of such employer shall be revoked and such employee shall be insured commencing on the first day of the month in which such election becomes effective or on the first day of the month next following receipt of notice by the board, whichever is later. The board shall determine the method of administration including the procedure for the collection of premiums. The board shall provide for pooling the employer costs which shall be determined separately for all employees insured under this section.

(8) A resolution adopted pursuant to sub. (4) shall be in effect only if the board determines that 75% of the eligible employees of that employer shall be covered at the time such resolution is effective. If a resolution is nullified by insufficient participation another resolution may be submitted after a lapse of 6 months from the previous filing.

(9) The terms "immediate annuity" and "disability annuity" shall also include any such

annuity provided under a retirement system of an employer as determined by the board.

(10) The governing body of any employer may repeal any resolution enacted pursuant to sub. (4), to be effective at the end of the calendar year if such rescinding resolution is received by the board 90 days prior to the end of the calendar year, otherwise at the end of the next calendar year.

(11) If any covered employee enters the employment of a different employer providing insurance hereunder, or of the state, and there is no gap between employments, then coverage shall be continuous and s. 40.18 (2) pertaining to conversion of insurance shall not be applicable except if a waiver is filed.

History: 1971 c. 214 ss. 13, 148; 1977 c. 84, 182; 1979 c. 34; 1979 c. 102 ss. 11, 236 (3); 1979 c. 301.

40.21 Coverage for new employees. In addition to coverage subsequently provided any person who enters employment in which incumbents are eligible for health insurance under this subchapter and who meets all the requirements of s. 40.11 (2) other than the completion of the qualifying period shall be eligible when enrolled pursuant to rule for such health insurance until the end of such qualifying period, but until the end of the qualifying period the full cost of such coverage shall be paid by such person.

40.23 Payments exempt from process. No payment of insurance provided under this subchapter shall be assignable, either in law or equity, or be subject to execution, levy, attachment, garnishment or other legal process.

40.24 Disposition of surplus. The group insurance board shall apportion all excess moneys becoming available to it through operation of the group insurance plans to reduce premium payments in following contract years, to establish reserves to stabilize costs in subsequent years or to purchase additional insurance.

40.25 Payment of administrative expenses. The group insurance board shall certify to the respective insurers for payment to the administrative account under s. 40.01 the amounts determined pursuant to s. 40.01 to be necessary for administrative costs.

History: 1979 c. 102 s. 236 (4).

40.26 Depositing of moneys. All moneys received by the board pursuant to this subchapter shall be deposited with the state treasurer to the credit of s. 20.515 (1) (wm) and as provided in s. 40.01.

History: 1971 c. 214; 1975 c. 39 s. 734.

SUBCHAPTER VI

SOCIAL SECURITY FOR PUBLIC EMPLOYEES

40.40 Social security for public employes; definitions. In this subchapter:

(1) "Public agency" means the state and any county, city, village, town, school district or other unit of government, or agency or instrumentality of 2 or more thereof which is eligible for inclusion under the federal OASDHI system.

(2) With respect to persons serving in positions subject to the state teachers retirement system who are employed by vocational, technical and adult education districts "public agency" means the state until July 1, 1974, except that for the purposes of s. 40.42 (2), and the applicable portions of s. 40.42 (3) "public agency" means the employer school district or other local unit of government.

(4) "Federal regulations" means the provisions of section 218 of Title II of the social security act enacted by the congress of the United States, and applicable regulations adopted pursuant thereto, and applicable provisions of the U.S. internal revenue code. "OASDHI" means federal old age, survivors, disability and health insurance under Titles II and XVIII of the federal social security act.

(5) "Coverage group" has the meaning given that term by federal regulations.

(7) "Director" means the director of the bureau which is responsible for the administration of the public employes social security fund.

History: 1971 c. 125; 1973 c. 90; 1975 c. 189

40.41 Coverage. (1) Each public agency other than the state may determine to be included under OASDHI through the adoption of a resolution by the governing body thereof with respect to the coverage groups specified in such resolution, which shall also state the effective date of coverage.

(2) Every state employe and state officer while employed in any position which is not included under any retirement system established by statute is included under the agreement authorized by sub. (9) if eligible for inclusion, and all participating employers which have acted pursuant to s. 41.05 to be included under the Wisconsin retirement fund are included when the participating employes thereof are eligible, and each city and village is pursuant to ss. 62.13 (9) (e) and (9a) and 61.65 (6), 1975 stats., included under the agreement as to police officers, and each public agency affected by s. 41.05 (8) (b) is pursuant thereto included under the agreement as to the employes affected

by such paragraph. This subsection is not applicable to services performed in any fire fighter's position.

(3) Notwithstanding subs. (1), (2) and (9), the persons included under any retirement system, or any coverage group therein permitted under federal regulations, may be included under the federal OASDHI system pursuant to a referendum held in conformity with section 218 (d) (3) of the federal social security act and a certification by the governor pursuant thereto, and the governor may take any and all actions which may be required in connection therewith. In the case of each public agency other than the state, a referendum shall be conducted only upon, and in conformity with, a request submitted by the governing body thereof. The agreement with the secretary of health, education and welfare may be modified to cover any such coverage group.

(4) For the purposes of sub. (3) the members of the combined group of the state teachers retirement system constitute a coverage group. Members of the state teachers retirement system may be included under the federal OASDHI system under sub. (3) only in accordance with s. 42.241.

(5) Effective April 1, 1966, with the exception of the exclusions under sub. (10) the only exclusions covering positions not under a retirement system which shall be in effect under the state-federal agreement pursuant to action taken under sub. (1) shall be those exclusions which are mandatory under federal regulations.

(6) For the purposes of sub. (3) the members of the combined group of a retirement fund created under s. 42.72 constitute a coverage group. Members of any such retirement fund may be included under the federal OASDHI system under sub. (3) only in accordance with s. 42.72.

(7) Effective July 1, 1966, all services performed by an individual in a position covered by a retirement system under ch. 42, but who is ineligible to be a member of such a retirement system, shall be covered under the federal OASDHI system if such coverage is not prohibited by federal regulations. This shall not affect the status of members of the separate group of a retirement system under ch. 42 who became members of the separate group by reason of eligibility for a choice in 1957 pursuant to s. 38.24 (3) (d), 1957 stats. or 42.241 (4), 1957 stats.

(8) All persons included under the conservation wardens pension fund are subject to this subchapter.

(9) The director with the approval of the secretary shall, pursuant to sub. (2) or upon the

40.41 PUBLIC EMPLOYE TRUST FUNDS

902

submission to him of a certified copy of a resolution adopted by the governing body of any public agency in accordance with sub. (1), execute upon behalf of the state an agreement or modification of an agreement, with the secretary of health, education and welfare for the inclusion of a coverage group of the employes and officers of such public agency under the federal OASDHI system established by federal regulations in conformity with such resolution or in conformity with sub. (2) and in conformity with federal regulations. The state and each public agency included under such agreement or modification thereof shall be bound by federal regulations, and by rules promulgated under s. 40.43 including any rule requiring payment of interest. No such agreement or modification shall be executed after December 31, 1972, for the purpose of permitting one or more individuals to transfer by individual choice from that part of a retirement system which is composed of positions of members who do not desire social security coverage to that part of a retirement system which is composed of positions of members who desire such coverage.

(10) No student or member of a board or commission, except members of governing bodies, shall be included under such agreement when filling a position or office which does not normally require actual performance of duty for at least 600 hours in each year.

History: 1971 c. 214 ss. 15, 148; 1977 c. 182.

40.42 Financial participation. (1) Each public agency included under an agreement made pursuant to this subchapter shall be liable for and shall make the contributions required of an employer under federal regulations.

(2) Each public agency included under such an agreement shall withhold from the persons compensated by such public agency who are covered by such agreement the portion of such compensation required to be withheld under the federal regulations.

(3) The contributions required under sub. (1) and the amounts withheld under sub. (2) shall be remitted by each public agency in conformity with rules promulgated under s. 40.43. The state shall be liable for all such remittances due from public agencies in conformity with the agreement under s. 40.41 (9), and shall make payment of all sums which are due under this subsection and become delinquent.

(6) All money received by the state pursuant to this section shall be deposited as provided in s. 40.01.

(7) Any money paid into the public employes social security account in error may be refunded upon certification to the department of adminis-

tration of the name of each public agency entitled to a refund and the amount thereof. Thereupon, and notwithstanding s. 20.913, the department of administration shall draw its warrant for the amount and in favor of the public agency so certified, and the state treasurer shall pay the same and charge it to the public employes social security account created by s. 40.01.

History: 1971 c. 214; 1973 c. 90; 1975 c. 39, 189.

Department of health and social services has authority to collect social security deductions which were not made at the time the employes were paid. 61 Atty Gen 237.

40.43 Rules. The secretary may promulgate rules to carry out the purposes of this subchapter.

SUBCHAPTER VIII**JOINT BENEFIT PLAN PROVISIONS**

40.50 Definitions. In chs. 40, 41 and 42, unless the context requires otherwise:

(1) "Department" means the department of employee trust funds.

(2) "Beneficiary" means the person, or a trust in which such person has a beneficial interest, so designated by a member, participant, employe or annuitant in the last written designation of beneficiary on file with, and in a form approved by, the department at the time of death. If a member, participant, employe or annuitant has filed a written designation of beneficiary in a form which is applicable only to a specified benefit plan, however, such written designation shall not apply in determining beneficiaries under another benefit plan.

(a) In the absence of a written designation of beneficiary, or if all beneficiaries so designated die before filing with the department an application for any death benefit payable, the beneficiary shall be the person determined in the following sequence: group 1, widow or widower; group 2, children (including stepchildren of both current and former marriages and legally adopted children) if at least one child survives the member, participant, employe or annuitant, in which event the share of any deceased child shall be payable to the surviving spouse of such child or to the surviving children of such child if there is no spouse, or otherwise to the other eligible children in this group; group 3, parent; group 4, grandchild; group 5, brother and sister. No payment may be made to a person included in any group if there is a living person in any preceding group. Any person who dies before filing with the department an application for any death benefit payable to such person shall not be considered a beneficiary except as provided under group 2. If a person dies after filing

a beneficiary application but before such application is initially approved any benefit payable shall be paid in accord with the written designation of beneficiary, if any, filed with the department in connection with such application or otherwise to the person's estate.

(b) Payment to 2 or more persons as joint beneficiary shall be share and share alike unless the member, participant, employe or annuitant has designated otherwise in a written designation of beneficiary on file with the department pursuant to this subsection.

(c) A person determined to be a beneficiary pursuant to this subsection may waive any benefit payable and the beneficiary shall then be determined as if such person had died prior to filing an application.

(d) If there is no written designation of beneficiary and no beneficiary determined as provided in par. (a), the beneficiary shall be the estate of the member, participant, employe or annuitant.

(e) A designation of beneficiary may be signed and filed by a guardian when accompanied by a certified copy of an order of a circuit court approving the specific terms thereof.

(f) If a member, participant, employe or annuitant fully terminates all coverage and closes all accounts to which a written beneficiary designation applies, such designation does not apply if such individual again becomes a member, participant, employe or annuitant.

(g) A designation of a testamentary trust as beneficiary shall satisfy the requirement of this subsection that a person or trust be specifically named in a written designation of beneficiary whether the will establishing such trust is written before or after the designation of beneficiary is received by the department. If, however, a designation specified the date or otherwise identified a specific will, such designation shall not apply if such will is not the last will and testament of the member, participant, employe or annuitant.

(3) "Secretary" means the secretary of employe trust funds.

(4) "Employer" means a public agency as defined in s. 40.40 (1), employer as defined in ss. 41.02 (4) and 42.20 (6) or a city of the 1st class subject to subch. II of ch. 42.

History: 1971 c. 125; 1973 c. 20; 1975 c. 189 ss. 48, 50, 51; 1975 c. 305; 1977 c. 449.

40.60 Disposition of inactive accounts.

(1) Any person entitled to a benefit under any provision of ch. 40, 41 or 42 who, according to the department's records, has attained the age of 67 and who has not dealt with the department for a period of 7 years shall be presumed, unless it is shown to the contrary, to have died intestate,

without heirs, or to have abandoned such moneys.

(2) All moneys or credits in such an account shall be applied to the appropriate employer accounts to reduce future funding requirements.

(3) The department shall periodically publish a notice in the official state paper stating the names of such persons, name of last employer, and the fact that a benefit will be paid to the respective persons listed or their respective heirs or legatees, without additional interest, on proof of ownership, if applied for.

(4) If any person files a claim within 7 years after the publication of such notice and furnishes proof of ownership of any amounts in an inactive account the claim shall be paid on the same basis as if no action had been taken under this section except that no interest shall accrue after the last normal date for crediting interest which preceded publication of such notices. The cost of the benefit shall be charged to the employer account credited under sub. (2).

(5) Notwithstanding any other provision of the statutes any account subject to this section may be settled as provided in s. 867.03.

History: 1971 c. 125; 1973 c. 20.

40.61 Benefit corrections. Any underpayment or overpayment of a separation, withdrawal or death benefit under ch. 41 or 42 which does not exceed \$5, and any correction of an annuity payment which does not exceed \$1 per month, shall not be corrected but shall be credited or debited to the investment income accounts of the fund from which the benefit was paid. If the member, participant, employe or beneficiary requests correction within 2 years of the original payment the benefit shall be corrected and the amount of the correction credited or debited to the appropriate account.

History: 1973 c. 20.

40.62 Late reports and payments. (1) (a)

If any employer fails to transmit to the department any report required by law or by rule before the end of the calendar month following the date when such report is due, the department shall prepare such report and submit to the employer a statement of the expenses incurred in securing such report, including the value of the personal services rendered in its preparation. The department shall file duplicates of the statement with the department of administration.

(b) Within 60 days after the receipt of the statement under par. (a) by the employer the statement shall be audited as other claims against the employer are audited and shall be paid into the state treasury and credited to the appropriation under s. 20.515 (1) (w).

40.62 PUBLIC EMPLOYEE TRUST FUNDS

904

(c) In default of payment by the employer, the amount specified in the statement under par. (a) shall become a special charge against the employer and shall be included in the next certification of state taxes and charges and shall be collected, with interest at the rate of 10% per year from the date such statement was submitted to the employer, as other charges are certified and collected, or collected as provided under sub. (3), and when so collected such amount and the interest shall be credited to the appropriation under s. 20.515 (1) (w).

(2) Interest shall be charged on accounts receivable from any employer if the remittance and any corresponding report are not received by the department in the manner and within the time limit fixed by rule or statute at the rate of one-half of one percent for each month or fraction thereof, from the due date to the date received by the department with a minimum charge of \$3, and such interest or minimum charge shall be paid forthwith to the department, and if it is not paid within 60 days after it is payable, it shall be collected as provided under sub. (3).

(3) (a) Whenever any employer fails to pay to the department any amount due, the department shall certify such amount or the estimated amount thereof to the department of administration which shall withhold such amount or estimated amount from the next apportionment of state aids or taxes of any kind payable to such employer and shall pay the amount so withheld to the department. When the exact amount due is determined and the department receives a sum in excess of such amount, the department shall pay such excess amount to the employer from whose aid such excess was withheld.

(b) When any such interest is payable by a department or agency of the state, the department shall certify the amount thereof with an explanation of such charge, together with a voucher in payment therefor to the department of administration which shall forthwith approve such voucher and within no more than 5 days make payment from the appropriation of the department or agency which failed to submit its payroll report on time.

History: 1975 c. 189; 1979 c. 110 s. 60 (13)

40.65 Additional contributions; method of payment.

(1) An employer under any retirement fund or system under ch. 41 or 42 may make contributions for any participant or member in addition to the employer contributions or deposits required under chs. 41 and 42. Such contributions for each employee shall be identified separately on the employer's reports to the appropriate retirement fund or system, and shall be available for all benefit purposes to the same

extent as contributions or deposits deducted from the earnings of the employee. Such contributions shall also be considered earnings or compensation for all benefit purposes under chs. 40 to 42.

(2) Notwithstanding any other provision of the statutes, provision may be made by rule for payment of an annuity from additional deposits or contributions for a specified period of time, regardless of the time of death of the annuitant. Notwithstanding any other provision of the statutes, a person receiving a retirement annuity under ch. 41 or 42 who has neither a living spouse nor a living child may elect in writing to receive as a lump sum payment any or all of the additional deposits or contributions made by or for such annuitant provided that such election is made within 3 months after May 19, 1976.

History: 1973 c. 20; 1975 c. 254

40.70 Distribution of annuity reserve surpluses. Notwithstanding any other provision of the statutes, any distribution of surpluses in the reserves for fixed annuity payments established under any of the plans created by chs. 41 and 42 shall be made as follows:

(1) Such distributions shall be expressed as percentage increases in the amount of the monthly annuity in force, including prior distributions of surpluses but not including any amount paid as a variable annuity or as a supplemental or adjusted benefit, preceding the effective date of the distribution. For purposes of this section, annuities in force shall include any disability annuity suspended because the annuitant had exceeded his earnings limitation for that year.

(2) Different percentages may be applied to annuities with different dates of initial payment as may be determined to be equitable but no other distinction shall be made among the various types of annuities payable from the fixed annuity reserve.

(3) Such distributions shall not be offset against any other benefit being received but shall be paid in full, nor shall any other benefit being received be reduced by any such distributions made after May 11, 1973.

(4) The effective date of such a distribution shall be no earlier than the first day of the 3rd full month after the percentages are established by the appropriate board.

History: 1973 c. 20; 1979 c. 221

40.75 Payments of benefits to minors and incompetents.

In any case in which a benefit amount becomes payable to a minor or to a person adjudged insane or mentally incompetent, the department may waive guardianship proceedings, and direct payment of such amount

to the person providing for or caring for such minor, or to the spouse, parent or blood relative providing for or caring for such insane or incompetent person.

History: 1975 c. 189.

40.80 Military leave credits. (1) Creditable service or equivalent amounts of deposits shall be granted in accordance with s. 41.09 (3), 42.245 (1a) or 42.78 (1a), for active service in the U.S. armed forces after December 31, 1965, for participants in the Wisconsin retirement fund, or after June 30, 1966, for members of a retirement system created under ch. 42, based on the total period of such service in the armed forces, provided:

(a) The participant or member enlisted or was ordered or inducted into active service in the armed forces of the United States; and

(b) The participant or member left the employment of a public employer covered by ch. 41 or 42 to enter such armed forces; and

(c) The participant or member returns to the employment of the public employer whose employment he left to enter such armed forces within 180 days of his release or discharge from such armed forces, or within 180 days of his release from hospitalization because of injury or sickness resulting from service in such armed forces; and

(d) The period of service in the armed forces is not more than 4 years, unless involuntarily extended for a longer period; and

(e) The participant or member was discharged from the armed forces of the United States under conditions other than dishonorable; and

(f) The participant or member upon his return from service in such armed forces furnishes such evidence as is required to establish his rights hereunder.

(2) In this section, "armed forces" means the U.S. army, including the WACS; the U.S. navy, including the WAVES; the U.S. air force, including the WAFS; the U.S. marine corps, including the WMS and the U.S. coast guard, including the SPARS.

History: 1971 c. 214.

40.84 Intrastate retirement reciprocity.

(1) This section is intended to encourage career public service by permitting earnings and service under 2 or more retirement programs created under chs. 41 and 42 to be combined, as hereinafter provided, for benefit computation and eligibility purposes.

(2) To accomplish the purpose of this section the highest monthly rate of earnings for a member or participant determined in accordance with s. 41.02 (21), 42.20 (26) or 42.70 (2),

PUBLIC EMPLOYE TRUST FUNDS 40.86

based on not less than 3 years of earnings, shall be used as the basis for any applicable benefit computation for which the member or participant is eligible under chs. 41 and 42. Creditable service under any of the retirement programs under chs. 41 and 42 may be combined if necessary to establish eligibility for any disability or death benefit.

(3) The employe trust funds board may adopt such rules as may be necessary to assure compliance with the intent of this section.

History: 1973 c. 127.

40.85 Termination of variable participation. (1) The employe trust funds board shall by rule provide that a participant or member who elected variable participation under ch. 41 or 42 prior to April 30, 1980 may by filing written notice with the department elect to cancel that variable participation as to future contributions. The employe trust funds board shall by rule also permit a participant or member who elects or has elected to cancel variable participation as to future contributions, or an annuitant, to elect, by filing written notice with the department, to transfer variable contribution accumulations to the fixed annuity division.

(2) A participant or member may specify in a notice filed under sub. (1) that election to cancel participation in the variable annuity division is conditional. If the participant or member so specifies the election is effective on the first date on which it may take effect on which the participant or member:

(a) Is an annuitant and the amount of the annuity the participant or member will receive if the election is made effective is greater than or equal to the amount of the annuity the participant or member would have received if the participant or member had not elected variable participation; or

(b) Is not an annuitant and the accumulated amount which is to be transferred to the fixed annuity division is equal to or greater than the amount which would have accumulated if the segregated contributions had been originally credited to the fixed annuity division.

(3) An election under sub. (1) or (2) is irrevocable and continuing except a participant or member may make a conditional election unconditional by filing written notice with the department.

History: 1979 c. 221.

40.86 Disability annuity options. (1) Notwithstanding any other law, a participant or member applying for a disability annuity under ch. 41 or 42 may elect to receive the actuarial equivalent of the disability annuity provided

40.86 PUBLIC EMPLOYE TRUST FUNDS

906

under ch. 41 or 42 in one of the following annuity forms:

(a) A straight life annuity terminating at the death of the annuitant.

(b) An annuity payable for the life of the annuitant with a guarantee of 180 monthly payments.

(c) An annuity payable for the life of the annuitant, and after the death of the annuitant, monthly payments, as elected by the participant or member, of either 100% or 75% of the amount of the annuity paid to the annuitant to be continued to the one beneficiary, for life, who is designated by the participant or member in the original application for an annuity.

(d) Any optional life annuity form prescribed by the employe trust funds board.

(2) If an optional annuity form is elected under this section the amount of the normal form disability annuity to which the participant or member is entitled under ch. 41 or 42 which is greater than the normal form retirement annuity to which the participant or member would be entitled under ch. 41 or 42, notwithstanding the age 55 requirement, shall be paid only as a straight life annuity terminating on the death of the annuitant. The balance of the present value of the disability annuity provided under ch. 41 or 42 shall be applied to provide an annuity in the optional form elected.

History: 1979 c 221

40.87 Credit reinstated under Wisconsin retirement system.

(1) If a participant or member receives a benefit under ch. 41 or 42 in a single sum after being discharged by an employer and is subsequently reinstated to a position with the employer by a court order, arbitration award, compromise settlement or otherwise as a result of an appeal of the discharge, all rights of the participant or member which were forfeited as a result of the payment of the benefit, including creditable service and accumulated contributions and deposits, are reinstated. The full amount of the benefit paid after discharge, plus interest at the rate applied to the contributions or deposits of the participant or member, shall be repaid to the department by the employer of an employe whose rights are reestablished under this subsection within 60 days after the effective date of the employe's reinstatement. The amount repaid by the employer under this subsection shall be deducted by the employer from any payment due the employe as a result of the resolution of the appeal or, if that amount is insufficient, the balance shall be deducted from the employe's earnings except the amount deducted from each earnings payment shall be not less than 10% nor more than 25% of the earnings payment. If the

employe terminates employment the employer shall notify the department of the amount not yet repaid, including any interest due, at the same time it notifies the department of the termination of employment, and the department shall repay to the employer the balance of the amount due from retentions made under sub. (2). The employer may charge interest, at a rate not in excess of the rate applied in the current year to contributions or deposits of participants or members, on any amount unpaid at the end of any calendar year after the year of reinstatement.

(2) The department shall retain from a benefit or annuity payable under ch. 41 or 42 an amount determined by it for the purpose of reimbursing an employer for an amount determined under sub. (1).

History: 1979 c 221.

SUBCHAPTER IX**EMPLOYMENT OF RETIRED EMPLOYES****40.90 Definitions.** In this subchapter:

(1) "Elected official" means:

(a) A supreme court justice, court of appeals judge, circuit court judge or a state, county, municipal, school district or other public official elected by the vote of the people; or

(b) A person appointed as provided in ch. 17 to fill a vacancy in a position as specified in par. (a).

(2) "Employe" means an employe of a governmental unit.

(3) "Governmental unit" means the state or any other unit of government or instrumentality of 2 or more units of government within the state.

(4) "Pay" means the gross amount paid to an employe as salary or wages for personal services rendered to or for a governmental unit, including amounts provided through deferred compensation or tax shelter agreements but excluding overtime compensation. For the purposes of this subsection, the gross amount paid shall be determined prior to deductions for taxes, insurance premiums, retirement contributions or deposits, and charitable contributions or similar amounts.

(5) "Retirement benefit" means a series of periodic payments payable on retirement of an employe under ch. 41 or 42 or chapter 201 or 396, laws of 1937. Retirement benefit does not include any portion of a benefit derived from voluntary additional contributions by the employe. For the purposes of this subsection, the amount of retirement benefit shall be determined prior to any deductions for taxes, insur-

ance premiums, or other deductions which reduce the amount of benefit actually paid.

History: 1979 c. 38

40.91 Wages reduced to offset retirement benefit. (1) Notwithstanding any other law, an employe who is occupying a position for which the rate of pay per month is over the dollar base and who also receives retirement benefits shall have his or her gross monthly pay reduced, but not below the dollar base, by the lesser of:

(a) The amount of the gross monthly retirement benefits the employe receives; or

(b) The amount determined by dividing the product of the gross monthly pay which is in excess of the dollar base times the monthly retirement benefit by the dollar base.

(2) For the purpose of sub. (1), the dollar base is \$1,667 from November 1, 1979 through December 31 of the 2nd calendar year commencing after November 1, 1979. The department shall establish the dollar base for each subsequent calendar year by multiplying the dollar base for the previous calendar year by the percentage increase in the average of all earnings paid during the preceding calendar year over the average of all earnings paid in the next preceding calendar year to participants of the Wisconsin retirement fund who were participating employes throughout both preceding calendar years.

(3) (a) For purposes of determining the reduction ratio provided by sub. (1) where the rate of pay is established on some basis other than monthly, the following are equivalent to one month

1. Hourly rate multiplied by 173.
2. Daily rate multiplied by 21.63.
3. Weekly rate multiplied by 4.33.
4. Biweekly rate multiplied by 2.16.

(b) Where the pay periods of a governmental unit are more frequent than monthly, the governmental unit shall convert the pay by the equivalents provided in par. (a) before determining any reduction under sub. (1).

(4) If an employe receives pay from 2 or more governmental units for the same employment the total amount of pay received by the employe from all the governmental units may not exceed the amount provided by sub. (1). The offset against an employe's pay under sub. (1) shall be applied by the governmental unit paying the greater portion of an employe's compensation. If all government units pay an equal portion of the pay each shall apply an equal portion of the offset under sub. (1).

History: 1979 c. 38

NOTE: Chapter 38, laws of 1979, which created this section, gives the legislative purpose in section 1.

PUBLIC EMPLOYE TRUST FUNDS 40.93

40.92 Retirement benefit; notice. (1) An employe shall give or mail written notice of information concerning a retirement benefit and the pay the employe receives which is necessary to a determination of compliance with s. 40.91 to the person designated by sub. (2):

(a) Within 10 days after commencing employment with a governmental unit or after receipt of notice that a retirement benefit is to be paid, whichever is later.

(b) Within 10 days after receiving information which renders information previously provided under this section incorrect.

(c) Within 30 days after this subchapter first becomes applicable to the employe under s. 40.96.

(2) An employe shall give or mail written notice under sub. (1) to:

(a) The department.

(b) To the clerk of each governmental unit other than the state from which the employe receives pay or if there is no clerk, to an officer, director or managing agent other than the employe.

(c) If the employe is not an elected official, to the appointing authority.

(3) An employe other than an elected official who violates this section may be removed, suspended without compensation, reduced in compensation or discharged in the manner provided by law.

(4) An employe who knowingly violates this section is subject to a civil forfeiture of not more than \$200 or an amount equal to the pay received in excess of the amount authorized under this subchapter, whichever is greater. The civil forfeiture provided by this subsection is in addition to any amounts recoverable under s. 40.93.

(5) The governmental unit of any appointing authority who knowingly pays or causes to be paid to any employe subject to this subchapter an amount in excess of the amount authorized by s. 40.91 is subject to a civil forfeiture of not more than \$200 or an amount equal to the excess amount paid to the employe, whichever is greater. The governmental unit may bring civil action against the appointing authority to recover the amount of forfeiture paid, and may remove, suspend or reduce the compensation of an appointing authority who is not an elected official who knowingly made or authorized the excess payments.

History: 1979 c. 38

40.93 Enforcement. (1) A retirement system established under ch. 41 or 42 or under chapter 201 or 396, laws of 1937, and a governmental unit shall promptly furnish to the department or a governmental unit, on request, the information available to it which relates to a

40.93 PUBLIC EMPLOYE TRUST FUNDS

908

retirement benefit or compensation paid to an employe which is necessary to determine compliance with this subchapter.

(2) A governmental unit may bring a civil action to recover:

(a) Pay paid to an employe in violation of s. 40.91; or

(b) Pay intentionally paid, with the knowledge of the employe, to offset the limit imposed by s. 40.91.

(3) The department of justice may bring a civil action, to recover, on behalf of a governmental unit, an amount due under sub. (2) if:

(a) The department so requests; and

(b) The governmental unit fails to commence an action within 60 days after receiving written notice from the department that an amount may be recovered under sub. (2).

(4) An action under sub. (2) or (3) shall be commenced within 6 years after the cause of action accrues or be barred.

History: 1979 c. 38.

40.94 Department; powers. (1) The secretary may promulgate rules necessary to the administration of this subchapter.

(2) The secretary shall administer this subchapter and may issue enforceable orders to any agency of the state on all matters relating to the administration, effect and enforcement of this subchapter.

(3) If any government unit other than the state violates s. 40.91 or 40.93 (1), the secretary may certify to the department of administration that the government unit is not in compliance

and the department of administration shall withhold any apportionment of state aid or taxes of any kind payable to the government unit after receipt of the certificate until the department certifies the government unit is in compliance.

History: 1979 c. 38.

40.95 Reduction not to affect benefit programs. Notwithstanding any other law, for the purpose of programs administered by the department under subchs. I, II and VIII and chs. 41 and 42 it is assumed that the amount of earnings of an employe is the amount payable if no reduction were required under this subchapter.

History: 1979 c. 80.

40.96 Applicability. (1) This subchapter applies to pay received by an employe after November 1, 1979, except as provided by subs. (2) and (3).

(2) Except as provided by sub. (3), this subchapter applies to pay received by an employe who is a public officer for the purposes of article IV, section 26 of the constitution only after the public officer commences a term of office after November 1, 1979.

(3) This subchapter applies to every judge of a court of record and justice of the supreme court on and after the date that any justice of the supreme court or judge of a court of record commences a term of office after November 1, 1979.

History: 1979 c. 38.