

1981 Assembly Bill 1082

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CHAPTER 278 , Laws of 1981

AN ACT to amend 40.05 (2) (a) and 40.90 (4); and to create 40.65 and 66.191 (7) of the statutes, relating to revising a disability benefit program for state and certain municipal protective occupation employees, granting rule-making authority and making an appropriation.

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

SECTION 1. 40.05 (2) (a) of the statutes, as affected by chapter 96, laws of 1981, is amended to read:

40.05 (2) (a) Contributions shall be made by each participating employer for current service in a percentage of the earnings of each participating employe determined as though all employes of all participating employers are employes of a single employer but with a separate percentage rate determined for each of the categories specified under s. 40.23 (2) (b) and for subcategories within each category as determined by rule to be necessary for equity among employers, including a subcategory for employes covered under s. 40.65 (1). The rates shall be determined on the basis of the information available at the time the determinations are made, and on the assumptions the actuary recommends from time to time and the board approves, by deducting from the then present value of all future benefits to be paid or purchased from the employer accumulation reserve on behalf of the then participants the amount then credited to the reserve for the

benefit of the members and the present value of future prior service contributions of the employers determined in accordance with par. (b), and dividing the remainder by the present value of the prospective future compensation of all participants.

SECTION 2. 40.65 of the statutes is created to read:

40.65 Duty disability and death benefits; protective occupation participants. (1) In this section:

(a) "Monthly salary" means the gross amount paid to a participant making a claim under this section at the time the injury occurred or disease was contracted, by the employer in whose employ the injury occurred or disease was contracted. Overtime pay may not be considered part of an employe's "monthly salary" unless the employe received it on a regular and dependable basis.

(b) "Protective occupation participant" means a participating employe, other than a county employe, who is a police officer, fire fighter, conservation warden, state forest ranger, field conservation employe of the department of natural resources who is subject to call for forest fire control or warden duty, member of the state traffic patrol, university of Wisconsin system full-time police officer, guard or any other employe whose principal duties are supervision and discipline of inmates at a state penal institution including central state hospital, excise tax investigator employed by the department of revenue, or a special agent employed by the division of criminal investigation of the department of justice.

(2) Any person desiring a benefit under this section must apply to the department of industry, labor and human relations, which department shall determine whether the applicant is eligible to receive the benefit and the participant's monthly salary. Appeals from the eligibility decision shall follow the procedures under ss. 102.16 to 102.26. If it is determined that an applicant is eligible, the department of industry, labor and human relations shall notify the department of employe trust funds and shall certify the applicant's monthly salary. The department of industry, labor and human relations may adopt rules needed to administer this subsection.

(3) The Wisconsin retirement board shall determine the amount of each monthly benefit payable under this section and its effective date. The board shall periodically review the dollar amount of each monthly benefit and adjust it to conform with the provisions of this section. The board may request any income or benefit information, or any information concerning a person's marital status, which it considers to be necessary to implement this subsection and may require a participant to submit a certified copy of his or her state or federal income tax return. The board may terminate the monthly benefit of any person who refuses to submit information requested by the board or who submits false information to the board.

(4) A protective occupation participant is entitled to a duty disability benefit as provided in this section if:

(a) The employe is injured while performing his or her duty or contracts a disease due to his or her occupation;

(b) The disability is likely to be permanent; and

(c) 1. The disability causes the employe to retire from his or her job;

2. The employe's pay or position is reduced or he or she is assigned to light duty; or

3. The employe's promotional opportunities within the service are adversely affected.

(5) (a) The monthly benefit payable to a participant under this section is 80% of the participant's monthly salary adjusted as provided in par. (b) and sub. (6).

(b) The Wisconsin retirement board shall reduce the amount of a participant's monthly benefit under this section by the amounts under subs. 1 to 6, except that the board may determine not to reduce a participant's benefit because of income related to

therapy or rehabilitation. The Wisconsin retirement board may assume that any benefit or amount listed under subds. 1 to 6 is payable to a participant until it is determined to the board's satisfaction that the participant is ineligible to receive the benefit or amount.

1. Any OASDHI benefit payable to the participant or the participant's spouse or a dependent because of the participant's work record.

2. Any unemployment compensation benefit payable to the participant because of his or her work record.

3. Any worker's compensation benefit payable to the participant, including payments made pursuant to a compromise settlement under s. 102.16 (1). A lump sum worker's compensation payment or compromise settlement shall reduce the participant's benefit under this section in monthly amounts equal to 4.3 times the maximum benefit which would otherwise be payable under ch. 102 for the participant's disability until the lump sum amount is exhausted.

4. Any disability and retirement benefit payable to the participant under this chapter, or under any other retirement system, that is based upon the participant's earnings record and years of service. A reduction under this subdivision may not be greater in amount than the amount of disability or retirement benefit received by the participant. If the participant is not eligible for a retirement benefit because he or she received a lump sum payment or withdrew his or her contributions on or after the date the participant became eligible to receive a benefit under this section, the amount received or withdrawn shall reduce the participant's benefit under this section in the amount of benefit that would be payable if, on the date the amount was received or withdrawn, the full amount received or withdrawn was applied under s. 40.23 (2) (c) as additional employe contributions credited to the participant's account.

5. All earnings payable to the participant from the employer under whom the duty disability occurred.

6. All earnings payable to the participant from an employer, other than the employer under whom the duty disability occurred, and all income from self-employment, the total of such earnings and income shall reduce the participant's benefit as follows:

a. For the amount of the total that is less than 40% of the participant's monthly salary, one-third of such amount;

b. For the amount of the total that is from 40% to 80% of the participant's monthly salary, one-half of such amount; and

c. For the amount of the total that is more than 80% of the participant's monthly salary, two-thirds of such amount.

(c) The Wisconsin retirement board may not reduce a participant's benefit because of income or benefits that are attributable to the earnings or work record of the participant's spouse or other member of the participant's family, or because of income or benefits attributable to an insurance contract, including income continuation programs.

(6) The Wisconsin retirement board shall adjust the monthly salary of every participant receiving a benefit under this section using the salary index for the previous calendar year as follows:

(a) For the purposes of sub. (5) (b) 6, annually on July 1 until the participant's death;

(b) For the purposes of sub. (5) (a), if the participant is receiving an annuity under s. 40.63 (1), annually on July 1 until the participant's death; and

(c) For the purposes of sub. (5) (a), if the participant is not receiving an annuity under s. 40.63 (1), annually on July 1 until the first July 1 after the participant's 60th birthday. Beginning on the July 1 after the participant's 60th birthday the participant's

monthly salary shall be increased annually in a percentage amount equal to the percentage amount of dividend awarded under s. 40.27 (2) until the participant's death. Notwithstanding s. 40.27 (2), any benefits payable under this section are not subject to distribution of annuity reserve surpluses.

(7) (a) If a protective occupation participant dies as a result of an injury or a disease for which a benefit is paid or would be payable under sub. (4), and the participant is survived by a spouse or an unmarried child under age 18, a monthly benefit shall be paid as follows:

1. To the surviving spouse, if the spouse was married to the participant on the date the participant was injured or contracted the disease, one-third of the participant's monthly salary as reflected at the time of death until the surviving spouse marries again.

2. To the guardian of a surviving unmarried child under age 18, \$15 per child.

3. The total monthly amount paid under subds. 1 and 2 may not exceed 65% of the participant's monthly salary as reflected at the time of death. Any reduction of benefits caused by such limitation shall be done on a proportional basis.

(b) Any person entitled to a benefit under both this subsection and ch. 102 because of the death of the same participant, shall have his or her benefit under this subsection reduced in an amount equal to the death benefit payable under ch. 102.

(8) Benefits payable under this section are not subject to subch. VII of this chapter.

(9) This section is applicable to protective occupation participants who apply for a benefit under this section on or after the effective date of this section (1981). A participant may not apply for a benefit under this section if he or she is receiving a benefit under s. 66.191 on the effective date of this section (1981).

SECTION 3. 40.90 (4) of the statutes, as affected by chapter 96, laws of 1981, is amended to read:

40.90 (4) "Retirement benefit" means a series of periodic payments payable on retirement of an employe under this chapter or chapter 201 or 396, laws of 1937. Retirement benefit does not include any benefit paid under s. 40.65 or 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, insurance premiums, or other deductions which reduce the amount of benefit actually paid.

SECTION 4. 66.191 (7) of the statutes is created to read:

66.191 (7) Beginning on the effective date of this subsection (1981), any person who is eligible for a duty disability benefit under s. 40.65 is not eligible for a benefit under this section.

SECTION 5. **Program responsibility changes.** In the sections of the statutes listed in Column A, the program responsibilities references shown in Column B are deleted and the program responsibilities references shown in Column C are inserted:

Statute Sections	References Deleted	References Inserted
15.221 (intro.)	none	40.65 (2)

SECTION 6. **Cross-reference changes.** In the sections of the statutes listed in Column A, the cross-references shown in Column B are changed to the cross-references shown in Column C:

Statute Sections	Old Cross-References	New Cross-References
101.04 (1)	56.07 (7)	40.65 (2), 56.07 (7)
227.05 (2)(e)	56.07 (7)	40.65 (2), 56.07 (7)
227.22 (2)	56.07 (7)	40.65 (2), 56.07 (7)
891.45	66.191	40.65 (2) or 66.191

SECTION 7. **Effective date.** This act takes effect on July 1, 1982.