

1989 Assembly Bill 534

Date of enactment: April 5, 1990  
Date of publication\*: April 20, 1990

# 1989 WISCONSIN ACT 166

AN ACT to renumber and amend 40.06 (1) (e) (intro.), 1 and 2, 40.24 (intro.) and 40.24 (1) to (5); to amend 40.03 (1) (j), 40.03 (7) (f), 40.03 (8) (f), 40.05 (2) (g), 40.24 (6), 40.24 (7) (a) (intro.) and (b), 40.25 (1) (a), 40.63 (5), 40.63 (8) (e), 40.63 (9) (d) and 40.73 (1) (c); and to create 40.02 (55m), 40.03 (6) (i) and 40.24 (1) (g) of the statutes, relating to: the time for filing appeals of certain determinations made by the department of employe trust funds and the time allowed for an annuitant under the Wisconsin retirement system to change his or her choice of annuity options (suggested as remedial legislation by the department of employe trust funds).

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

LAW REVISION COMMITTEE PREFATORY NOTE: This bill is a remedial legislation proposal, requested by the department of employe trust funds and introduced by the law revision committee under s. 13.83 (1) (c) 4., stats. After careful consideration of the various provisions of this bill, the law revision committee has determined that this bill makes minor substantive changes in the statutes, and that these changes are desirable as a matter of public policy.

**SECTION 1.** 40.02 (55m) of the statutes is created to read:

40.02 (55m) "Timely appeal" means a written request for the review of a determination that is filed within 90 days after the determination is mailed to the person aggrieved by the determination.

**SECTION 2.** 40.03 (1) (j) of the statutes is amended to read:

40.03 (1) (j) Shall accept timely appeals which have been timely filed in writing from determinations made by the department, other than appeals of determinations made by the department regarding disability annuities, made by the department. ~~Unless otherwise specifically provided by statute an appeal to the board is timely filed if received in the department's offices in writing not later than 90 days after the date notice of the determination is mailed to the person appealing.~~ The board shall review the relevant facts and may hold a hearing. Upon comple-

tion of its review and hearing, if any, the board shall make a determination which it shall certify to the participating employer or the appropriate state agency and to the appropriate employe, if any. The board's determination of an employe's status under s. 40.06 (1) (e) shall remain in effect until receipt by the department of notification indicating a different classification. A participant may appeal that determination as provided by s. 40.06 (1) (e).

**SECTION 3.** 40.03 (6) (i) of the statutes is created to read:

40.03 (6) (i) May accept timely appeals of determinations made by the department affecting any right or benefit under any group insurance plan provided for under this chapter.

**SECTION 4.** 40.03 (7) (f) of the statutes is amended to read:

40.03 (7) (f) Shall accept timely appeals which have been ~~timely filed from~~ of determinations made by the department regarding disability annuities for teacher participants in accordance with s. 40.63 (5) and (9) (d).

**SECTION 5.** 40.03 (8) (f) of the statutes is amended to read:

40.03 (8) (f) Shall accept timely appeals which have been ~~timely filed from~~ of determinations made by the department regarding disability annuities for participants other than teachers in accordance with s. 40.63 (5) and (9) (d).

– 2 –

## 1989 Assembly Bill 534

**SECTION 6.** 40.05 (2) (g) of the statutes is amended to read:

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

**SECTION 7.** 40.06 (1) (e) (intro.), 1 and 2 of the statutes are renumbered 40.06 (1) (e) 1. to 3. and amended to read:

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

2. ~~The~~ Either the employe or the participating employer or state agency ~~which that~~ gave the notice under par. (d) may appeal the department's determination under subd. 1 to the board by filing ~~written notice of a~~ timely appeal with the department ~~not later than 30 days after the report is mailed to the person appealing.~~ If ~~written notice of an~~ an appeal is not filed as required by under this paragraph subdivision, the determination from which an appeal is permitted is final.

3. A determination of an employe's status under par. (d) made after an appeal is filed under this paragraph shall remain in effect until receipt by the department of a notification indicating a classification for the employe different from the determination. The employe may appeal that subsequent determination by filing an appeal as required under this paragraph.

**SECTION 8.** 40.24 (intro.) of the statutes is renumbered 40.24 (1) (intro.) and amended to read:

40.24 (1) (intro.) Except as provided in ~~sub. subs. (2) to (4) and (7)~~, any participant who is eligible to receive a retirement annuity in the normal form may elect to receive the actuarial equivalent of the normal form annuity in ~~one~~ any of the following optional annuity forms:

(2) ~~The department may modify any optional annuity form prescribed in subs. (1) to (5) modified sub. (1) (a) to (f) by rule as necessary to conform to federal regulations, or in any one optional life annuity form provided by rule. The~~

(3) Any participant specified under sub. (1) (intro.) may also elect to receive the amount provided by accu-

mulated additional contributions in a different optional form than the balance of the annuity.

(4) Any optional annuity form under this section shall be based on actuarial equivalent values with due regard to selection against the fund, shall not provide a greater monthly amount payable to others upon the death of the participant than the amount which would have been payable to the participant if the participant had continued to live and shall not be changed after the effective date of the annuity unless the participant's request for the change is received by the department within ~~30~~ 60 days after the date on which the first annuity check, share draft or other draft is issued or funds are otherwise transferred.

**SECTION 9.** 40.24 (1) to (5) of the statutes are renumbered 40.24 (1) (a) to (f), and 40.24 (1) (f), as renumbered, is amended to read:

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

**SECTION 10.** 40.24 (1) (g) of the statutes is created to read:

40.24 (1) (g) Any one optional life annuity form provided by rule.

**SECTION 10m.** 40.24 (6) of the statutes, as affected by 1989 Wisconsin Act 13, is amended to read:

40.24 (6) If a participant's annuity is not effective until after the earlier of the participant's normal retirement date under s. 40.02 (42) (a) to (d) or the date on which the participant attains the age of 62 years and the participant elects an optional annuity form, the monthly amount of annuity provided by conversion of the benefit computed under s. 40.23 (2m) (e) to the optional form elected shall not be less than the monthly amount of annuity which would have been paid had the participant retired ~~immediately upon attaining~~ on the earlier of the participant's normal retirement date under s. 40.02 (42) (a) to (d) or the date on which the participant attains the age of 62 years and elected the same optional form of annuity and the same beneficiary. It shall be assumed for purposes of calculating the amount of an annuity under this subsection that all of the participant's earned annuity was earned prior to the participant's normal retirement

**1989 Assembly Bill 534**

date, but the department shall use the beneficiary's actual age on the effective date of the annuity.

**SECTION 11.** 40.24 (7) (a) (intro.) and (b) of the statutes are amended to read:

40.24 (7) (a) (intro.) Any participant who has been married to the same spouse for at least one year immediately preceding the participant's annuity effective date shall elect the annuity option under sub. ~~(3)~~ (1) (d), the annuity option under sub. ~~(4)~~ (1) (e), if the reduced annuity under sub. ~~(4)~~ (1) (e) is payable in an optional life form provided under sub. ~~(3)~~ (1) (d), or an annuity option in a form provided by rule, if the annuity is payable for life with monthly payments of at least 75% of the amount of the annuity to be continued to the beneficiary, for life, upon the death of the participant, and the participant shall designate the spouse as the beneficiary, unless the participant's application for a retirement annuity in a different optional annuity form is signed by both the participant and the participant's spouse or unless the participant establishes to the satisfaction of the department that, by reason of absence or other inability, the spouse's signature may not be obtained. This subsection does not apply to any of the following:

(b) In administering this subsection, the secretary may require the participant to provide the department with a certification of the participant's marital status and of the validity of the spouse's signature. If a participant is exempted from the requirements under par. (a) on the basis of a certification which the department or a court subsequently determines to be invalid, the liability of the fund and the department shall be limited to a conversion of annuity options at the time the certification is determined to be invalid. The conversion shall be from the present value of the annuity in the optional form originally elected by the participant to an annuity with the same present value but in the optional form under sub. ~~(3)~~ (1) (d) and with monthly payments of 100% of the amount of the annuity paid to the annuitant to be continued to the spouse beneficiary.

**SECTION 12.** 40.25 (1) (a) of the statutes is amended to read:

40.25 (1) (a) The retirement annuity in the normal form which could be provided under s. 40.23 is equal to or less than \$25 monthly for a benefit with an effective date in the calendar year of 1982 or, for a benefit with an effective date in a subsequent calendar year, the monthly amount applied under this paragraph for the previous calendar year increased by the salary index and ignoring fractions of the dollar, the then present value, including additional contributions, of the annuity shall be paid in a single sum instead of as an annuity. The additional contribution accumulations shall not be included in determining whether a single sum should be paid if the optional form provided by s. 40.24 ~~(5)~~ (1) (f) or a lump sum under sub. (4) is selected.

**SECTION 13.** 40.63 (5) of the statutes is amended to read:

40.63 (5) The department shall make a report based on the evidence prescribed in subs. (1) to (4) as to whether a disability benefit shall be granted and the department shall submit the report to the teachers retirement board for teacher participants and to the Wisconsin retirement board for participants other than teachers. A copy of the report and notice of the date that the report was presented, or will be presented, to the appropriate board and the board's name, shall be mailed to the applicant and to the applicant's former employer. ~~If either~~ Either the applicant or the employer wishes to contest the department's findings, ~~he or she shall send a written~~ may request for a hearing under s. 227.44 to ~~contest the department's determination by filing a timely appeal with~~ the appropriate board ~~within 30 days following the presentation of the report to the board or the date the report was mailed to the applicant or former employer, whichever is later.~~ If a request for a hearing is not timely filed, and the appropriate board does not disapprove the department's ~~recommendation~~ determination or request additional information within the time allowed for filing appeals, the report shall be final. If the board requests additional information, the report shall be final 30 days after the board's receipt of the requested information ~~if~~ unless the board ~~has not disapproved~~ disapproves the report. If the report is disapproved, notice of the board's action shall be sent to the applicant and the applicant's former employer. ~~If either~~ Either the applicant or the employer wishes to may contest the board's action, ~~he or she shall send by submitting~~ a written request for a hearing under s. 227.44 to the appropriate board within 30 days following the date on which the notice of the board's action was mailed to the applicant or the employer.

**SECTION 14.** 40.63 (8) (e) of the statutes is amended to read:

40.63 (8) (e) The annuity option provided by s. 40.24 ~~(4)~~ (1) (e) may not be elected.

**SECTION 15.** 40.63 (9) (d) of the statutes is amended to read:

40.63 (9) (d) If the department terminates a disability annuity under this subsection, the department shall make a report which shall include the department's determination and the reasons for the determination. The department shall submit the report to the teachers retirement board for teacher participants and to the Wisconsin retirement board for participants other than teachers. A copy of the report and notice of the date that the report was presented, or will be presented to the appropriate board, and the board's name, shall be mailed to the affected annuitant. ~~If the~~ An annuitant wishes to contest the department's determination, ~~he or she shall send a written~~ may request for a hearing under s. 227.44 to ~~contest the department's determination by filing a timely appeal with~~ the

## 1989 Assembly Bill 534

appropriate board within 30 days following the presentation of the report to the board or the date the report was mailed to the annuitant, whichever is later. If a request for a hearing is not timely filed, and the appropriate board does not disapprove the department's determination or request additional information within the time allowed for filing appeals, the report shall be final. If the board requests additional information, the report shall be final 30 days after the board's receipt of the requested information if unless the board has not disapproved disapproves the department's determination.

**SECTION 16.** 40.73 (1) (c) of the statutes is amended to read:

40.73 (1) (c) In lieu of the benefit payable under par. (a) or (b), upon the death of a participating employe who has attained the age of 60 years, or age 55 if a protective occupation participant, if the beneficiary to whom a death benefit is payable is a dependent of the participating employe, or a trust in which such a beneficiary has a beneficial interest, the present value on the day following the date of death of the life annuity to the beneficiary which would have been payable if the participating employe had been eligible to receive a retirement annuity, computed under s. 40.23 or 40.26, beginning on the date of death and had elected to receive the annuity in the form of a joint and survivor annuity providing the same amount of annuity to the surviving beneficiary as the reduced amount payable during the participant's lifetime. If there is more than one beneficiary the amount of the annuity and its present value will be determined as if the oldest of the beneficiaries were the sole beneficiary.

If the death benefit payable to the beneficiary under this paragraph would be less than the amount determined under par. (a) or (b) the death benefit shall be payable under par. (a) or (b) and this paragraph shall not be applicable to the beneficiary. An annuitant receiving an annuity only under s. 40.24 ~~(5) (1) (f)~~, which annuity was an immediate annuity, shall be deemed a participating employe for purposes of this paragraph only, but the amount payable under s. 40.24 ~~(5) (1) (f)~~ shall not be changed.

NOTE: This bill standardizes the appeal period after various determinations by the department of employe trust funds and its boards. Under the bill, an appeal filed by a state agency, participating employer or a person aggrieved by a determination is timely, if the person files the written appeal to the appropriate board within 90 days after the determination is mailed to the aggrieved agency, participating employer or person.

The bill also authorizes the group insurance board to hear timely appeals of department determinations regarding rights and benefits under any group insurance plans under this chapter.

This bill extends the period in which an annuitant in the Wisconsin retirement system may change his or her selection of a retirement annuity option from 30 days to 60 days after the annuitant his or her first check is issued. Once the time period lapses, the option choice is irrevocable for the remainder of the annuity payments. A time limit is retained to minimize the impact of adverse selection against the fund.

Because often the first check is for a partial monthly period, it does not provide a accurate measure upon which the annuitant can make a judgment on the appropriateness of the choice of an annuity option. The 60-day time period is designed to provide a more reasonable length of time for the annuitant to change the option.