

LEGISLATIVE BILL 467

Approved by the Governor April 18, 2016

Introduced by Kolterman, 24; Davis, 43; Groene, 42; Kolowski, 31; Lindstrom, 18; Mello, 5; Nordquist, 7.

A BILL FOR AN ACT relating to the Nebraska State Patrol Retirement Act; to amend sections 81-2014, 81-2014.01, 81-2017, 81-2026, 81-2027.08, and 81-2041, Reissue Revised Statutes of Nebraska; to define and redefine terms; to change provisions relating to contributions, benefit calculations, benefit adjustments, and DROP participation; to provide for cost-of-living payments as prescribed; to harmonize provisions; to provide severability; to repeal the original sections; and to declare an emergency.

Be it enacted by the people of the State of Nebraska,

Section 1. Section 81-2014, Reissue Revised Statutes of Nebraska, is amended to read:

81-2014 For purposes of the Nebraska State Patrol Retirement Act:

(1) Actuarial equivalent means the equality in value of the aggregate amounts expected to be received under different forms of payment or to be received at an earlier retirement age than the normal retirement age. The determinations shall be based on the 1994 Group Annuity Mortality Table reflecting sex-distinct factors blended using seventy-five percent of the male table and twenty-five percent of the female table. An interest rate of eight percent per annum shall be reflected in making the determinations until such percent is amended by the Legislature;

(2) Board means the Public Employees Retirement Board;

(3)(a)(i) Compensation means gross wages or salaries payable to the member for personal services performed during the plan year. Compensation does not include insurance premiums converted into cash payments, reimbursement for expenses incurred, fringe benefits, per diems, or bonuses for services not actually rendered, including, but not limited to, early retirement inducements, cash awards, and severance pay, except for retroactive salary payments paid pursuant to court order, arbitration, or litigation and grievance settlements. ~~For any officer employed after January 4, 1979, compensation does not include compensation for unused sick leave or unused vacation leave converted to cash payments.~~ Compensation includes overtime pay, member retirement contributions, and amounts contributed by the member to plans under sections 125 and 457 of the Internal Revenue Code as defined in section 49-801.01 or any other section of the code which defers or excludes such amounts from income.

(ii) For any officer employed on or prior to January 4, 1979, compensation includes compensation for unused sick leave or unused vacation leave converted to cash payments.

(iii) For any officer employed after January 4, 1979, and prior to July 1, 2016, compensation does not include compensation for unused sick leave or unused vacation leave converted to cash payments and includes compensation for unused holiday compensatory time and unused compensatory time converted to cash payments.

(iv) For any officer employed on or after July 1, 2016, compensation does not include compensation for unused sick leave, unused vacation leave, unused holiday compensatory time, unused compensatory time, or any other type of unused leave, compensatory time, or similar benefits, converted to cash payments.

(b) Compensation in excess of the limitations set forth in section 401(a) (17) of the Internal Revenue Code as defined in section 49-801.01 shall be disregarded. For an employee who was a member of the retirement system before the first plan year beginning after December 31, 1995, the limitation on compensation shall not be less than the amount which was allowed to be taken into account under the retirement system as in effect on July 1, 1993;

(4) Creditable service means service granted pursuant to section 81-2034 and all service rendered while a contributing member of the retirement system. Creditable service includes working days, sick days, vacation days, holidays, and any other leave days for which the officer is paid regular wages except as specifically provided in the Nebraska State Patrol Retirement Act. Creditable service does not include eligibility and vesting credit nor service years for which member contributions are withdrawn and not repaid;

(5) Current benefit means the initial benefit increased by all adjustments made pursuant to the Nebraska State Patrol Retirement Act;

(6) DROP means the deferred retirement option plan as provided in section 81-2041;

(7) DROP account means an individual DROP participant's defined contribution account under section 414(k) of the Internal Revenue Code;

(8) DROP period means the amount of time the member elects to participate in DROP which shall be for a period not to exceed five years from and after the date of the member's DROP election;

(9) Eligibility and vesting credit means credit for years, or a fraction of a year, of participation in a Nebraska government plan for purposes of

determining eligibility for benefits under the Nebraska State Patrol Retirement Act. Such credit shall be used toward the vesting percentage pursuant to subsection (2) of section 81-2031 but shall not be included as years of service in the benefit calculation;

(10) Initial benefit means the retirement benefit calculated at the time of retirement;

(11) Officer means an officer provided for in sections 81-2001 to 81-2009;

(12) Plan year means the twelve-month period beginning on July 1 and ending on June 30 of the following year;

(13) Regular interest means interest fixed at a rate equal to the daily treasury yield curve for one-year treasury securities, as published by the Secretary of the Treasury of the United States, that applies on July 1 of each year, which may be credited monthly, quarterly, semiannually, or annually as the board may direct;

(14) Retirement application means the form approved and provided by the retirement system for acceptance of a member's request for either regular or disability retirement;

(15) Retirement date means (a) the first day of the month following the date upon which a member's request for retirement is received on a retirement application if the member is eligible for retirement and has terminated employment or (b) the first day of the month following termination of employment if the member is eligible for retirement and has filed an application but has not yet terminated employment;

(16) Retirement system or system means the Nebraska State Patrol Retirement System as provided in the act;

(17) Service means employment as a member of the Nebraska State Patrol and shall not be deemed to be interrupted by (a) temporary or seasonal suspension of service that does not terminate the employee's employment, (b) leave of absence authorized by the employer for a period not exceeding twelve months, (c) leave of absence because of disability, or (d) military service, when properly authorized by the board. Service does not include any period of disability for which disability retirement benefits are received under subsection (1) of section 81-2025;

(18) Surviving spouse means (a) the spouse married to the member on the date of the member's death if married for at least one year prior to death or if married on the date of the member's retirement or (b) the spouse or former spouse of the member if survivorship rights are provided under a qualified domestic relations order filed with the board pursuant to the Spousal Pension Rights Act. The spouse or former spouse shall supersede the spouse married to the member on the date of the member's death as provided under a qualified domestic relations order. If the benefits payable to the spouse or former spouse under a qualified domestic relations order are less than the value of benefits entitled to the surviving spouse, the spouse married to the member on the date of the member's death shall be the surviving spouse for the balance of the benefits; and

(19) Termination of employment occurs on the date on which the Nebraska State Patrol determines that the officer's employer-employee relationship with the patrol is dissolved. The Nebraska State Patrol shall notify the board of the date on which such a termination has occurred. Termination of employment does not include ceasing employment with the Nebraska State Patrol if the officer returns to regular employment with the Nebraska State Patrol or another agency of the State of Nebraska and there are less than one hundred twenty days between the date when the employee's employer-employee relationship ceased and the date when the employer-employee relationship commenced with the Nebraska State Patrol or another state agency. Termination of employment does not occur upon an officer's participation in DROP pursuant to section 81-2041. It is the responsibility of the employer that is involved in the termination of employment to notify the board of such change in employment and provide the board with such information as the board deems necessary. If the board determines that termination of employment has not occurred and a retirement benefit has been paid to a member of the retirement system pursuant to section 81-2026, the board shall require the member who has received such benefit to repay the benefit to the retirement system.

Sec. 2. Section 81-2014.01, Reissue Revised Statutes of Nebraska, is amended to read:

81-2014.01 Sections 81-2014 to 81-2041 and sections 6 and 7 of this act shall be known and may be cited as the Nebraska State Patrol Retirement Act.

Sec. 3. Section 81-2017, Reissue Revised Statutes of Nebraska, is amended to read:

81-2017 (1) Commencing July 1, 2010, and until July 1, 2011, each officer while in the service of the Nebraska State Patrol shall pay or have paid on his or her behalf a sum equal to sixteen percent of his or her monthly compensation. Commencing July 1, 2011, and until July 1, 2013, each officer while in the service of the Nebraska State Patrol shall pay or have paid on his or her behalf a sum equal to nineteen percent of his or her monthly compensation. Commencing July 1, 2013, each officer who commenced service prior to July 1, 2016, while in the service of the Nebraska State Patrol shall pay or have paid on his or her behalf a sum equal to sixteen percent of his or her monthly compensation. Each officer who commenced service on or after July 1, 2016, while in the service of the Nebraska State Patrol shall pay or have paid on his or her behalf a sum equal to seventeen percent of his or her monthly compensation. Such amounts shall be deducted monthly by the Director of Administrative Services who shall draw a warrant monthly in the amount of the

total deductions from the compensation of members of the Nebraska State Patrol in accordance with subsection (4) of this section, and the State Treasurer shall credit the amount of such warrant to the State Patrol Retirement Fund. The director shall cause a detailed report of all monthly deductions to be made each month to the board.

(2) In addition, commencing July 1, 2010, and until July 1, 2011, there shall be assessed against the appropriation of the Nebraska State Patrol a sum equal to the amount of sixteen percent of each officer's monthly compensation which shall be credited to the State Patrol Retirement Fund. Commencing July 1, 2011, and until July 1, 2013, there shall be assessed against the appropriation of the Nebraska State Patrol a sum equal to the amount of nineteen percent of each officer's monthly compensation which shall be credited to the State Patrol Retirement Fund. Commencing July 1, 2013, for each officer who commenced service prior to July 1, 2016, there shall be assessed against the appropriation of the Nebraska State Patrol a sum equal to the amount of sixteen percent of each officer's monthly compensation which shall be credited to the State Patrol Retirement Fund. Commencing July 1, 2016, for each officer who commenced service on or after July 1, 2016, there shall be assessed against the appropriation of the Nebraska State Patrol a sum equal to the amount of seventeen percent of each officer's monthly compensation which shall be credited to the State Patrol Retirement Fund. This assessment constitutes an employer match and shall be contingent upon the officer making his or her contributions to the retirement system.

(3) For the fiscal year beginning on July 1, 2002, and each fiscal year thereafter, the actuary for the board shall perform an actuarial valuation of the system using the entry age actuarial cost method. Under this method, the actuarially required funding rate is equal to the normal cost rate, plus the contribution rate necessary to amortize the unfunded actuarial accrued liability on a level percentage of salary basis. The normal cost under this method shall be determined for each individual member on a level percentage of salary basis. The normal cost amount is then summed for all members. Beginning July 1, 2006, any existing unfunded liabilities shall be reinitialized and amortized over a thirty-year period, and during each subsequent actuarial valuation, changes in the funded actuarial accrued liability due to changes in benefits, actuarial assumptions, the asset valuation method, or actuarial gains or losses shall be measured and amortized over a thirty-year period beginning on the valuation date of such change. If the unfunded actuarial accrued liability under the entry age actuarial cost method is zero or less than zero on an actuarial valuation date, then all prior unfunded actuarial accrued liabilities shall be considered fully funded and the unfunded actuarial accrued liability shall be reinitialized and amortized over a thirty-year period as of the actuarial valuation date. If the actuarially required contribution rate exceeds the rate of all contributions required pursuant to the Nebraska State Patrol Retirement Act, there shall be a supplemental appropriation sufficient to pay for the differences between the actuarially required contribution rate and the rate of all contributions required pursuant to the Nebraska State Patrol Retirement Act. Such valuation shall be on the basis of actuarial assumptions recommended by the actuary, approved by the board, and kept on file with the board.

(4) The state shall pick up the member contributions required by this section for all compensation paid on or after January 1, 1985, and the contributions so picked up shall be treated as employer contributions pursuant to section 414(h)(2) of the Internal Revenue Code in determining federal tax treatment under the code and shall not be included as gross income of the member until such time as they are distributed or made available. The contributions, although designated as member contributions, shall be paid by the state in lieu of member contributions. The state shall pay these member contributions from the same source of funds which is used in paying earnings to the member. The state shall pick up these contributions by a compensation deduction through a reduction in the cash compensation of the member. Member contributions picked up shall be treated for all purposes of the Nebraska State Patrol Retirement Act in the same manner and to the extent as member contributions made prior to the date picked up.

Sec. 4. Section 81-2026, Reissue Revised Statutes of Nebraska, is amended to read:

81-2026 (1)(a) Any officer qualified for an annuity as provided in section 81-2025 for reasons other than disability shall be entitled to receive a monthly annuity for the remainder of the officer's life. The annuity payments shall continue until the end of the calendar month in which the officer dies. The amount of the annuity shall be a percentage of the officer's final average monthly compensation. For retirement on or after the fifty-fifth birthday of the member or on or after the fiftieth birthday of a member who has been in the employ of the state for twenty-five years, as calculated in section 81-2033, the percentage shall be three percent multiplied by the number of years of creditable service, as calculated in section 81-2033, except that the percentage shall never be greater than seventy-five percent.

(b) For retirement pursuant to subsection (2) of section 81-2025 on or after the fiftieth birthday of the member but prior to the fifty-fifth birthday of the member who has been in the employ of the state for less than twenty-five years, as calculated in section 81-2033, the annuity which would apply if the member were age fifty-five at the date of retirement shall be reduced by five-ninths of one percent for each month by which the early retirement date precedes age fifty-five or for each month by which the early retirement date

precedes the date upon which the member has served for twenty-five years, whichever is earlier. Any officer who has completed thirty years of creditable service with the Nebraska State Patrol shall have retirement benefits computed as if the officer had reached age fifty-five.

(c) For purposes of this computation: ~~—~~

(i) For an officer who became a member prior to July 1, 2016, final average monthly compensation means shall mean the sum of the officer's total compensation during the three twelve-month periods of service as an officer in which compensation was the greatest divided by thirty-six and:

(A) For ~~—~~ and for any officer employed on or before January 4, 1979, the officer's total compensation includes shall include payments received for unused vacation and sick leave accumulated during the final three years of service; or ~~—~~

(B) For any officer employed after January 4, 1979, and prior to July 1, 2016, the officer's total compensation includes payments received for unused holiday compensatory time and unused compensatory time; and

(ii) For an officer who became a member on or after July 1, 2016, final average monthly compensation means the sum of the officer's total compensation during the five twelve-month periods of service as an officer in which compensation was the greatest divided by sixty and does not include payments received for unused sick leave, unused vacation leave, unused holiday compensatory time, unused compensatory time, or any other type of unused leave, compensatory time, or similar benefits, converted to cash payments. The five twelve-month periods used for calculating an officer's final average monthly compensation ends with the month during which the officer's final compensation is paid. In the determination of compensation, that part of an officer's compensation for the plan year which exceeds the officer's compensation for the preceding plan year by more than eight percent during the capping period shall be excluded. Such officer's compensation for the first plan year of the capping period shall be compared to the officer's compensation received for the plan year immediately preceding the capping period. For purposes of this subdivision, capping period means the five plan years preceding the officer's retirement date. The board shall adopt and promulgate rules and regulations for the implementation of this section, including rules and regulations related to prorating, annualizing, or recalculating an officer's final average monthly compensation for each plan year in the capping period.

(2) Any officer qualified for an annuity as provided in section 81-2025 for reasons of disability shall be entitled to receive a monthly annuity for the remainder of the period of disablement as provided in sections 81-2028 to 81-2030. The amount of the annuity shall be fifty percent of the officer's monthly compensation at the date of disablement if the officer has completed seventeen or fewer years of creditable service. If the officer has completed more than seventeen years of creditable service, the amount of the annuity shall be three percent of the final monthly compensation at the date of disablement multiplied by the total years of creditable service but not to exceed seventy-five percent of the final average monthly compensation as defined in subsection (1) of this section. The date of disablement shall be the date on which the benefits as provided in section 81-2028 have been exhausted.

(3) Upon the death of an officer after retirement for reasons other than disability, benefits shall be provided as a percentage of the amount of the officer's annuity, calculated as follows:

(a) If there is a surviving spouse but no dependent child or children of the officer under nineteen years of age, the surviving spouse shall receive a benefit equal to seventy-five percent of the amount of the officer's annuity for the remainder of the surviving spouse's life;

(b) If there is a surviving spouse and the surviving spouse has in his or her care a dependent child or children of the officer under nineteen years of age and there is no other dependent child or children of the officer not in the care of the surviving spouse under nineteen years of age, the benefit shall be equal to one hundred percent of the officer's annuity. When there is no remaining dependent child of the officer under nineteen years of age, the benefit shall be seventy-five percent of the amount of the officer's annuity to the surviving spouse for the remainder of the surviving spouse's life;

(c) If there is a surviving spouse and the surviving spouse has in his or her care a dependent child or children of the officer under nineteen years of age or there is another dependent child or children of the officer under nineteen years of age not in the care of the surviving spouse, the benefit shall be twenty-five percent of the amount of the officer's annuity to the surviving spouse and seventy-five percent of the amount of the officer's annuity to the dependent children of the officer under nineteen years of age to be divided equally among such dependent children but in no case shall the benefit received by a surviving spouse and dependent children residing with such spouse be less than fifty percent of the amount of the officer's annuity. At such time as any dependent child of the officer attains nineteen years of age, the benefit shall be divided equally among the remaining dependent children of the officer who have not yet attained nineteen years of age. When there is no remaining dependent child of the officer under nineteen years of age, the benefit shall be seventy-five percent of the amount of the officer's annuity to the surviving spouse for the remainder of the surviving spouse's life;

(d) If there is no surviving spouse and a dependent child or children of the officer under nineteen years of age, the benefit shall be equal to seventy-five percent of the officer's annuity to the dependent children of the officer

under nineteen years of age to be divided equally among such dependent children. At such time as any dependent child of the officer attains nineteen years of age, the benefit shall be divided equally among the remaining dependent children of the officer who have not yet attained nineteen years of age; and

(e) If there is no surviving spouse or no dependent child or children of the officer under nineteen years of age, the amount of benefit such officer has received under the Nebraska State Patrol Retirement Act shall be computed. If such amount is less than the contributions to the State Patrol Retirement Fund made by such officer, plus regular interest, the difference shall be paid to the officer's designated beneficiary or estate.

(4) Upon the death of an officer after retirement for reasons of disability, benefits shall be provided as if the officer had retired for reasons other than disability.

(5) Upon the death of an officer before retirement, benefits shall be provided as if the officer had retired for reasons of disability on the date of such officer's death, calculated as follows:

(a) If there is a surviving spouse but no dependent child or children of the officer under nineteen years of age, the surviving spouse shall receive a benefit equal to seventy-five percent of the amount of the officer's annuity for the remainder of the surviving spouse's life;

(b) If there is a surviving spouse and the surviving spouse has in his or her care a dependent child or children of the officer under nineteen years of age and there is no other dependent child or children of the officer not in the care of the surviving spouse under nineteen years of age, the benefit shall be equal to one hundred percent of the officer's annuity. When there is no remaining dependent child of the officer under nineteen years of age, the benefit shall be seventy-five percent of the amount of the officer's annuity to the surviving spouse for the remainder of the surviving spouse's life;

(c) If there is a surviving spouse and the surviving spouse has in his or her care a dependent child or children of the officer under nineteen years of age or there is another dependent child or children of the officer under nineteen years of age not in the care of the surviving spouse, the benefit shall be twenty-five percent of the amount of the officer's annuity to the surviving spouse and seventy-five percent of the amount of the officer's annuity to the dependent children of the officer under nineteen years of age to be divided equally among such dependent children but in no case shall the benefit received by a surviving spouse and dependent children residing with such spouse be less than fifty percent of the amount of the officer's annuity. At such time as any dependent child of the officer attains nineteen years of age, the benefit shall be divided equally among the remaining dependent children of the officer who have not yet attained nineteen years of age. When there is no remaining dependent child of the officer under nineteen years of age, the benefit shall be seventy-five percent of the amount of the officer's annuity to the surviving spouse for the remainder of the surviving spouse's life;

(d) If there is no surviving spouse and a dependent child or children of the officer under nineteen years of age, the benefit shall be equal to seventy-five percent of the officer's annuity to the dependent children of the officer under nineteen years of age to be divided equally among such dependent children. At such time as any dependent child of the officer attains nineteen years of age, the benefit shall be divided equally among the remaining dependent children of the officer who have not yet attained nineteen years of age; and

(e) If no benefits are paid to a surviving spouse or dependent child or children of the officer, benefits will be paid as described in subsection (1) of section 81-2031.

(6) A lump-sum death benefit paid to the member's beneficiary, other than the member's estate, that is an eligible distribution may be distributed in the form of a direct transfer to a retirement plan eligible to receive such transfer under the provisions of the Internal Revenue Code.

(7) For any member whose death occurs on or after January 1, 2007, while performing qualified military service as defined in section 414(u) of the Internal Revenue Code, the member's beneficiary shall be entitled to any additional death benefit that would have been provided, other than the accrual of any benefit relating to the period of qualified military service. The additional death benefit shall be determined as if the member had returned to employment with the Nebraska State Patrol and such employment had terminated on the date of the member's death.

(8) Any changes made to this section by Laws 2004, LB 1097, shall apply only to retirements, disabilities, and deaths occurring on or after July 16, 2004.

Sec. 5. Section 81-2027.08, Reissue Revised Statutes of Nebraska, is amended to read:

81-2027.08 (1) Beginning July 1, 2011, and each July 1 thereafter, the board shall determine the number of retired members or beneficiaries described in subdivision (4)(b) of this section in the retirement system and an annual benefit adjustment shall be made by the board for each retired member or beneficiary under one of the cost-of-living adjustment calculation methods found in subsection (2), (3), or (4) of this section. Each retired member or beneficiary, if eligible, shall receive an annual benefit adjustment under the cost-of-living adjustment calculation method that provides the retired member or beneficiary the greatest annual benefit adjustment increase. No retired

member or beneficiary shall receive an annual benefit adjustment under more than one of the cost-of-living adjustment calculation methods provided in this section.

(2) The current benefit paid to a retired member or beneficiary under this subsection shall be adjusted so that the purchasing power of the benefit being paid is not less than sixty percent of the purchasing power of the initial benefit. The purchasing power of the initial benefit in any year following the year in which the initial benefit commenced shall be calculated by dividing the United States Department of Labor, Bureau of Labor Statistics, Consumer Price Index for Urban Wage Earners and Clerical Workers factor on June 30 of the current year by the Consumer Price Index for Urban Wage Earners and Clerical Workers factor on June 30 of the year in which the benefit commenced. The result shall be multiplied by the product that results when the amount of the initial benefit is multiplied by sixty percent. In any year in which applying the adjustment provided in subsection (3) of this section results in a benefit which would be less than sixty percent of the purchasing power of the initial benefit as calculated in this subsection, the adjustment shall instead be equal to the percentage change in the Consumer Price Index for Urban Wage Earners and Clerical Workers factor from the prior year to the current year.

(3) The current benefit paid to a retired member or beneficiary under this subsection shall be increased annually by the lesser of (a) the percentage change in the Consumer Price Index for Urban Wage Earners and Clerical Workers for the period between June 30 of the prior year to June 30 of the present year or (b) two and one-half percent.

(4)(a) The current benefit paid to a retired member or beneficiary under this subsection shall be calculated by multiplying the retired member's or beneficiary's total monthly benefit by the lesser of (i) the cumulative change in the Consumer Price Index for Urban Wage Earners and Clerical Workers from the last adjustment of the total monthly benefit of each retired member or beneficiary through June 30 of the year for which the annual benefit adjustment is being calculated or (ii) an amount equal to three percent per annum compounded for the period from the last adjustment of the total monthly benefit of each retired member or beneficiary through June 30 of the year for which the annual benefit adjustment is being calculated.

(b) In order for a retired member or beneficiary to receive the cost-of-living adjustment calculation method in this subsection, the retired member or beneficiary shall be (i) a retired member or beneficiary who has been receiving a retirement benefit for at least five years if the member had at least twenty-five years of creditable service, (ii) a member who has been receiving a disability retirement benefit for at least five years pursuant to section 81-2025, or (iii) a beneficiary who has been receiving a death benefit pursuant to section 81-2026 for at least five years, if the member's or beneficiary's monthly accrual rate is less than or equal to the minimum accrual rate as determined by this subsection.

(c) The monthly accrual rate under this subsection is the retired member's or beneficiary's total monthly benefit divided by the number of years of creditable service earned by the retired or deceased member.

(d) The total monthly benefit under this subsection is the total benefit received by a retired member or beneficiary pursuant to the Nebraska State Patrol Retirement Act and previous adjustments made pursuant to this section or any other provision of the act that grants a benefit or cost-of-living increase, but the total monthly benefit shall not include sums received by an eligible retired member or eligible beneficiary from federal sources.

(e) Beginning July 1, 2010, the minimum accrual rate under this subsection was forty dollars and sixteen cents. Beginning July 1, 2011, the minimum accrual rate under this subsection was forty-one dollars and seventy-nine cents. Beginning July 1, 2012, the minimum accrual rate under this subsection was forty-two dollars and forty-five cents. Beginning July 1, 2013, the board shall annually adjust the minimum accrual rate to reflect the cumulative percentage change in the Consumer Price Index for Urban Wage Earners and Clerical Workers from the last adjustment of the minimum accrual rate.

(5) Beginning July 1, 2011, and each July 1 thereafter, each retired member or beneficiary shall receive the sum of the annual benefit adjustment and such retiree's total monthly benefit less withholding, which sum shall be the retired member's or beneficiary's adjusted total monthly benefit. Each retired member or beneficiary shall receive the adjusted total monthly benefit until the expiration of the annuity option selected by the member or until the retired member or beneficiary again qualifies for the annual benefit adjustment, whichever occurs first.

(6) The annual benefit adjustment pursuant to this section shall not cause a current benefit to be reduced, and a retired member or beneficiary shall never receive less than the adjusted total monthly benefit until the annuity option selected by the member expires.

(7) The board shall adjust the annual benefit adjustment provided in this section so that the cost-of-living adjustment provided to the retired member or beneficiary at the time of the annual benefit adjustment does not exceed the change in the Consumer Price Index for Urban Wage Earners and Clerical Workers for the period between June 30 of the prior year to June 30 of the present year. If the consumer price index used in this section is discontinued or replaced, a substitute index published by the United States Department of Labor shall be selected by the board which shall be a reasonable representative measurement of the cost-of-living for retired employees.

(8) This section applies to an officer who became a member prior to July

~~1, 2016 The state shall contribute to the State Patrol Retirement Fund an annual level dollar payment certified by the board. For the 2011-12 fiscal year through the 2012-13 fiscal year, the annual level dollar payment certified by the board shall equal 3.04888 percent of six million eight hundred ninety-five thousand dollars.~~

Sec. 6. On July 1 of each year, for officers who became members on or after July 1, 2016:

(1) The board shall determine the number of retired members or beneficiaries of members in the retirement system who became members on or after July 1, 2016, and an annual benefit adjustment shall be made by the board for each such retired member or beneficiary. The benefit paid to a retired member or beneficiary under this section shall be increased annually by the lesser of (a) the percentage change in the Consumer Price Index for Urban Wage Earners and Clerical Workers for the period between June 30 of the prior year to June 30 of the present year or (b) one percent. If the consumer price index used in this section is discontinued or replaced, a substitute index published by the United States Department of Labor shall be selected by the board which shall be a reasonable representative measurement of the cost-of-living for retired employees;

(2) Each retired member or beneficiary shall receive the sum of the annual benefit adjustment and such retired member's or beneficiary's total monthly benefit less withholding, which sum shall be the retired member's or beneficiary's adjusted total monthly benefit. Each such retired member or beneficiary shall receive the adjusted total monthly benefit until the expiration of the annuity option selected by the member or until the retired member or beneficiary again qualifies for the annual benefit adjustment, whichever occurs first; and

(3) The annual benefit adjustment pursuant to this section shall not cause a current benefit to be reduced, and a retired member or beneficiary shall never receive less than the adjusted total monthly benefit until the annuity option selected by the member expires.

Sec. 7. (1) Beginning July 1, 2016, for officers who became members on or after July 1, 2016, if the annual valuation made by the actuary, as approved by the board, indicates that the retirement system is fully funded and has sufficient actuarial surplus to provide for a supplemental, lump-sum cost-of-living payment, the board may, in its discretion, elect to pay up to a maximum one and one-half percent supplemental, lump-sum cost-of-living payment to each retired member or beneficiary based on the retired member's or beneficiary's total monthly benefit through June 30 of the year for which the supplemental, lump-sum cost-of-living payment is being calculated. The supplemental, lump-sum cost-of-living payment shall be paid within sixty days after the board's decision. In no event shall the board declare a supplemental, lump-sum cost-of-living payment if such adjustment would cause the plan to be less than fully funded.

(2) For purposes of this section, fully funded means the unfunded actuarial accrued liability, based on the lesser of the actuarial value and the market value, under the entry age actuarial cost method, is less than zero on the most recent actuarial valuation date.

(3) Any decision or determination by the board to declare or not declare a cost-of-living payment or as to whether the annual valuation indicates a sufficient actuarial surplus to provide for a cost-of-living payment shall be made in the sole, absolute, and final discretion of the board and shall not be subject to challenge by any member or beneficiary. In no event shall the Legislature be constrained or limited in amending the system notwithstanding the effect of any such change upon the actuarial surplus of the system and the ability of the board to declare future cost-of-living payments.

Sec. 8. Section 81-2041, Reissue Revised Statutes of Nebraska, is amended to read:

81-2041 (1) Any officer who became a member prior to July 1, 2016, and member who meets the participation requirements of subsection (2) of this section may participate in DROP. DROP provides that subsequent to attaining normal age and service retirement eligibility, a member may voluntarily choose to participate in DROP upon its adoption which, for purposes of this section, shall be the earlier of September 1, 2008, or the first of the month following a favorable letter determination by the Internal Revenue Service. If the member chooses to participate in DROP, the member shall be deemed to have retired but shall not be deemed to be terminated, and the member may continue in active employment for up to a five-year period. During the DROP period, the member's retirement benefit payments shall be deposited into the DROP account for the benefit of the member until the member actually retires from active employment at or before the expiration of the DROP period. Thereafter, future retirement benefit payments shall be made directly to the member, and the member shall have access to all funds in the DROP account designated for the benefit of the member. DROP funds shall be held and invested in a defined contribution account under section 414(k) of the Internal Revenue Code and shall meet the limitations in section 415 of the code.

(2) To participate in the DROP program, a member shall meet the following requirements:

(a) A member shall be eligible to enter DROP at any time subsequent to the date when the member has (i) attained normal retirement age and (ii) completed twenty-five years of service. Members having attained normal retirement age and completed twenty-five years of service on or before the date of adoption of DROP shall be eligible to enter DROP at any future date;

(b) A member who elects to enter DROP shall be entitled to receive regular age and service retirement benefits in accordance with section 81-2026. A member is entitled to remain in DROP for a maximum of five years subsequent to the date of the member's DROP election. A member may separate from service and thereby exit DROP at any time during the DROP period. On or before the completion of the DROP period, the member must separate from active employment and exit DROP. During the DROP period, a member's retirement benefit shall be payable to the DROP account vendor designated in the member's name. Amounts transferred or paid to a participating member's DROP account shall not constitute annual additions under section 415 of the Internal Revenue Code;

(c) A member electing to enter DROP shall choose an annuity payment option. After the option is chosen, the member shall not be entitled to any retirement benefit changes, for reasons including, but not limited to, wage increases, promotions, and demotions, except that the restriction on retirement benefit changes shall not apply in the event of duty-related death or duty-related disability. The benefit amount shall be fixed as of the date of election and shall be payable as if the employee retired on that date and separated from active employment. Upon the death of a member during the DROP period, monthly benefits shall be provided as a percentage of the amount of the member's annuity as set forth in subsection (3) of section 81-2026 based upon the annuity benefit calculation made at commencement of the DROP period. In addition, the balance of the DROP account, if any, shall be provided to the beneficiary or beneficiaries of the member in accordance with subsection (6) of section 81-2026 or, if no beneficiary is provided, to the estate of the member. Upon the disability of a member during the DROP period, the member shall be deemed to have completed the DROP period, shall begin receiving the annuity benefit as calculated at the commencement of the DROP period, and shall be paid the balance of the DROP account, if any;

(d) No member shall be allowed to continue making the required contributions while the member is enrolled in DROP;

(e) During the DROP period, the Nebraska State Patrol shall not be assessed the amount required under subsection (2) of section 81-2017 nor shall such amount be credited to the State Patrol Retirement Fund;

(f) The member shall be paid the balance of the DROP account upon the member's separation from active employment or at the expiration of the DROP period thereby ending the member's participation in DROP. If a member has not voluntarily separated from active employment on or before the completion of the DROP period, the member's retirement benefit shall be paid directly to the member thereby ending the member's active employment. The member's DROP account shall consist of accrued retirement benefits and interest on such benefits;

(g) Any member that is enrolled in DROP shall be responsible for directing the DROP account designated for the benefit of the member by investing the account in any DROP investment options. There shall be no guaranteed rate of investment return on DROP account assets. Any losses, charges, or expenses incurred by the participating DROP member in such member's DROP account by virtue of the investment options selected by the participating DROP member shall not be made up by the retirement system but all of the same shall be borne by the participating DROP member. The retirement system, the state, the board, and the state investment officer shall not be responsible for any investment results under the DROP agreement. Transfers between investment options shall be in accordance with the rules and regulations of DROP. A DROP account shall be established for each participating DROP member. Such DROP account shall be adjusted no less frequently than annually for the member's retirement benefit distributions and net investment earnings and losses;

(h) If the DROP account is subject to administrative or other fees or charges, such fees or charges shall be charged to the participating DROP member's DROP account; ~~and~~

(i) Cost-of-living adjustments or payments as provided for in section 81-2027.08 or sections 6 and 7 of this act shall not be applied to retirement benefits during the DROP period; and -

(j) Any officer who became a member on or after July 1, 2016, is specifically prohibited from participating in DROP.

Sec. 9. If any section in this act or any part of any section is declared invalid or unconstitutional, the declaration shall not affect the validity or constitutionality of the remaining portions.

Sec. 10. Original sections 81-2014, 81-2014.01, 81-2017, 81-2026, 81-2027.08, and 81-2041, Reissue Revised Statutes of Nebraska, are repealed.

Sec. 11. Since an emergency exists, this act takes effect when passed and approved according to law.