

LEGISLATIVE BILL 320

Approved by the Governor May 29, 2003

Introduced by Stuhr, 24

AN ACT relating to courts; to amend section 24-721, Reissue Revised Statutes of Nebraska, section 24-703, Revised Statutes Supplement, 2002, and section 24-708, Revised Statutes Supplement, 2002, as amended by section 16, Legislative Bill 451, Ninety-eighth Legislature, First Session, 2003; to change provisions relating to eligibility and required contributions for judges' retirement and court fees; to repeal the original sections; and to declare an emergency.

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

Section 1. Section 24-703, Revised Statutes Supplement, 2002, is amended to read:

24-703. (1) Each original member shall contribute monthly four percent of his or her monthly compensation to the fund until the maximum benefit as limited in subsection (1) of section 24-710 has been earned. It shall be the duty of the Director of Administrative Services in accordance with subsection (10) of this section to make a deduction of four percent on the monthly payroll of each original member who is a judge of the Supreme Court, a judge of the Court of Appeals, a judge of the district court, a judge of a separate juvenile court, a judge of the county court, a clerk magistrate of the county court who was an associate county judge and a member of the fund at the time of his or her appointment as a clerk magistrate, or a judge of the Nebraska Workers' Compensation Court showing the amount to be deducted and its credit to the fund. The Director of Administrative Services and the State Treasurer shall credit the four percent as shown on the payroll and the amounts received from the various counties to the fund and remit the same to the director in charge of the judges retirement system who shall keep an accurate record of the contributions of each judge.

(2) (a) Prior to July 1, 2003, each ~~Each~~ future member shall contribute monthly six percent of his or her monthly compensation to the fund until the maximum benefit as limited in subsection (2) of section 24-710 has been earned. Prior to July 1, 2003, any ~~Any~~ time the maximum benefit is changed, a future member who has previously earned the maximum benefit as it existed prior to the change shall contribute monthly six percent of his or her monthly compensation to the fund until the maximum benefit as changed and as limited in subsection (2) of section 24-710 has been earned.

(b) Beginning July 1, 2003, each future member shall contribute monthly eight percent of his or her monthly compensation to the fund until the maximum benefit as limited in subsection (2) of section 24-710 has been earned. Beginning July 1, 2003, after the maximum benefit as limited in subsection (2) of section 24-710 has been earned, a future member shall contribute monthly four percent of his or her monthly compensation to the fund.

(c) It shall be the duty of the Director of Administrative Services to make a deduction ~~of six percent~~ on the monthly payroll of each such future member who is a judge of the Supreme Court, a judge of the Court of Appeals, a judge of the district court, a judge of a separate juvenile court, a judge of the county court, a clerk magistrate of the county court who was an associate county judge and a member of the fund at the time of his or her appointment as a clerk magistrate, or a judge of the Nebraska Workers' Compensation Court showing the amount to be deducted and its credit to the fund. This shall be done each month. The Director of Administrative Services and the State Treasurer shall credit the ~~six percent~~ amount as shown on the payroll and the amounts received from the various counties to the fund and remit the same to the director in charge of the judges retirement system who shall keep an accurate record of the contributions of each judge.

(3) A Nebraska Retirement Fund for Judges fee of ~~one dollar five~~ dollars shall be taxed as costs in each civil cause of action, criminal cause of action, traffic misdemeanor or infraction, and city or village ordinance violation filed in the district courts and the county courts. In county courts a sum shall be charged which is equal to ten percent of each fee provided by sections 33-125, 33-126.02, 33-126.03, and 33-126.06. No judges retirement fee shall be charged for filing a report pursuant to sections 33-126.02 and 33-126.06. When collected by the clerk of the district or county court, such fees shall be paid to the director in charge of the judges retirement system on forms prescribed by the board by the clerk within ten

days after the close of each calendar quarter. Such director shall promptly thereafter remit the same to the State Treasurer for credit to the fund. No Nebraska Retirement Fund for Judges fee which is uncollectible for any reason shall be waived by a county judge as provided in section 29-2709.

(4) All expenditures from the fund shall be authorized by voucher in the manner prescribed in section 24-713. The fund shall be used for the payment of all annuities and other benefits and for the expenses of administration.

(5) The fund shall consist of the total fund as of December 25, 1969, the contributions of members as provided in this section, all supplementary court fees as provided in subsection (3) of this section, and any required contributions of the state.

(6) Not later than January 1 of each year, the State Treasurer shall transfer to the fund the amount certified by the board as being necessary to pay the cost of any benefits accrued during the fiscal year ending the previous June 30 in excess of member contributions for that fiscal year and court fees as provided in subsection (3) of this section, if any, for that fiscal year plus any required contributions of the state as provided in subsection (9) of this section.

(7) Benefits under the retirement system to members or to their beneficiaries shall be paid from the fund.

(8) Any member who is making contributions to the fund on December 25, 1969, may, on or before June 30, 1970, elect to become a future member by delivering written notice of such election to the board.

(9) Not later than January 1 of each year, the State Treasurer shall transfer to the fund an amount, determined on the basis of an actuarial valuation as of the previous June 30 and certified by the board, to fully fund the unfunded accrued liabilities of the retirement system as of June 30, 1988, by level payments up to January 1, 2000. 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. For the fiscal year beginning 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 payment 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. The initial unfunded actual accrued liability as of July 1, 2002, if any, shall be amortized over a twenty-five-year period. 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 twenty-five-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 twenty-five-year period as of the actuarial valuation date. If the actuarially required contribution rate exceeds the rate of all contributions required pursuant to the Judges 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 Judges Retirement Act.

(10) The state or county 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 in determining federal tax treatment under the Internal Revenue Code as defined in section 49-801.01, except that the state or county shall continue to withhold federal income taxes based upon these contributions until the Internal Revenue Service or the federal courts rule that, pursuant to section 414(h) of the code, these contributions shall not be included as gross income of the member until such time as they are distributed or made available. The state or county shall pay these member contributions from the same source of funds which is used in paying earnings to the member. The state or county shall pick up these contributions by a compensation deduction through a reduction in the compensation of the member. Member contributions picked up shall be treated for all purposes of the Judges Retirement Act in the same manner and to the extent as member contributions made prior to the date picked up.

Sec. 2. Section 24-708, Revised Statutes Supplement, 2002, as amended by section 16, Legislative Bill 451, Ninety-eighth Legislature, First

Session, 2003, is amended to read:

24-708. (1) ~~Any~~ Except as provided in section 24-721, a judge may retire upon reaching the age of sixty-five and upon making application to the board. Upon retiring each such judge shall receive retirement annuities as provided in section 24-710.

(2) ~~A~~ Except as provided in section 24-721, a judge may retire upon the attainment of age fifty-five and elect to receive a reduced monthly retirement income in lieu of a deferred vested annuity. The judge may request that the reduced monthly retirement income commence at any date, beginning on the first day of the month following the actual retirement date and ending on the normal retirement date. The amount of the monthly retirement income shall be calculated based on the length of creditable service and average compensation at the actual retirement date and shall be reduced when the payments commence prior to the normal retirement date to an amount that is actuarially equivalent to the deferred vested annuity payable at the normal retirement date.

(3) Payment of any benefit provided under the Judges Retirement Act may not be deferred later than April 1 of the year following the year in which the judge has both attained at least age seventy and one-half years and terminated his or her employment as a judge.

(4) The effective date of retirement payments shall be the first day of the month following (a) the date a member qualifies for retirement as provided in this section or (b) the date upon which a member's request for retirement is received on an application form provided by the retirement system, whichever is later. An application may be filed no more than ninety days in advance of qualifying for retirement.

(5) The board shall make reasonable efforts to locate the member or the member's beneficiary and distribute benefits by the required beginning date as specified by section 401(a)(9) of the Internal Revenue Code and the regulations issued thereunder. If the board is unable to make such a distribution, the benefit shall be distributed pursuant to the Uniform Disposition of Unclaimed Property Act and no amounts may be applied to increase the benefits any member would otherwise receive under the Judges Retirement Act.

Sec. 3. Section 24-721, Reissue Revised Statutes of Nebraska, is amended to read:

24-721. Any citizen of the State of Nebraska shall have the right at all times to complain to the Commission on Judicial Qualifications with reference to the acts, activities, or qualifications of any Justice or judge of the Supreme Court or judge of any of the courts of the State of Nebraska or to request that the commission consider the qualifications of any Justice or judge of the Supreme Court or judge of any of the courts of the State of Nebraska. Upon receipt of any such complaint or request, the commission shall make such investigation as it determines to be necessary. The commission shall have the right to subpoena witnesses; to hold hearings; to require the Justice or judge to submit to physical or mental examination by medical experts; to appoint special masters to conduct hearings; to make independent investigations, either by members of the commission or by special investigators employed by the commission; to hold confidential prehearing proceedings with the person or persons filing the complaint or request, or with his or her or their agents or attorneys; and to hold confidential prehearing proceedings with the judge or Justice involved in the complaint or request. If the commission finds probable cause for the existence of any of the grounds for disciplinary action or retirement specified in section 24-722, it shall privately reprimand the Justice or judge or order a formal open hearing to be held before it concerning the reprimand, discipline, censure, suspension, removal, or retirement of such Justice or judge. A judge who receives official notice of a complaint or request pursuant to this section shall not be allowed to retire pursuant to the Judges Retirement Act until the matter is resolved by the commission or the Supreme Court, if the commission recommends action by the court. If a hearing is ordered, the commission shall advise the judge or Justice involved, in writing, of the specific charges which have been made and supported, substantiated, or revealed by the independent investigation of the commission. The judge or Justice shall be given reasonable time in which to formally answer such charges in writing and the matter shall then be set for formal open hearing, at which time the commission shall cause the testimony and the documentary evidence relating to the charges to be produced and recorded in such manner as the commission shall determine to be advisable, giving the judge or Justice involved and his or her attorney a full opportunity to question and cross-examine the witnesses and evidence so produced. The judge or Justice shall have an opportunity to produce at such hearing, testimony, evidence, and documents relating to the

charges involved; thereafter any rebuttal evidence may be produced. In the alternative or in addition, the commission may request the Supreme Court to appoint one or more special masters who shall be judges of courts of record to hold a formal open hearing to take evidence in any such matter, and to report to the commission. Whenever any person shall refuse to testify or to produce books, papers, or other evidence when required to do so in any hearing held before the Commission on Judicial Qualifications or before a special master or masters appointed under the provisions of this section for the reason that the testimony or evidence required of him or her may tend to incriminate him or her or subject him or her to a forfeiture or penalty, he or she may nevertheless be compelled to testify or produce such evidence by order of the Commission on Judicial Qualifications or special master or masters on motion of counsel to the commission. No person who testifies or produces evidence in obedience to the command of the commission or special master or masters in such case shall be liable to any forfeiture or penalty for or on account of any transaction, matter, or thing concerning or arising from that as to which he or she may so testify or produce evidence, nor shall such testimony or evidence be used directly or indirectly in any proceedings against him or her, except that no person shall be exempt from prosecution and punishment for perjury or contempt committed in so testifying. The requirement to testify or produce evidence shall not apply when such person proves the real and substantial danger of a prosecution against him or her in another jurisdiction based on the admissions to be made by him or her in this state. The commission or special master or masters shall have power to punish for contempt for any action specified in section 25-2121. If, after formal open hearing, or after considering the record and report of the masters, the commission finds that the charges are established by clear and convincing evidence, it shall recommend to the Supreme Court that the Justice or judge of the Supreme Court or other judge involved shall be reprimanded, disciplined, censured, suspended without pay for a definite period of time not to exceed six months, removed, or retired as the case may be. All hearings before the commission and all proceedings before masters and before the Supreme Court shall be conducted in accordance with rules promulgated or to be promulgated by the Supreme Court.

Sec. 4. Original section 24-721, Reissue Revised Statutes of Nebraska, section 24-703, Revised Statutes Supplement, 2002, and section 24-708, Revised Statutes Supplement, 2002, as amended by section 16, Legislative Bill 451, Ninety-eighth Legislature, First Session, 2003, are repealed.

Sec. 5. Since an emergency exists, this act takes effect when passed and approved according to law.