

**STATE OF MICHIGAN
101ST LEGISLATURE
REGULAR SESSION OF 2022**

Introduced by Reps. Bollin, Albert, VanSingel, Bellino and Wozniak

ENROLLED HOUSE BILL No. 4265

AN ACT to amend 1992 PA 234, entitled “An act to establish a judges retirement system; to provide for the administration and maintenance of the retirement system; to create a retirement board; to prescribe the powers and duties of the retirement board; to establish certain reserves for the retirement system; to establish certain funds; to prescribe the powers and duties of certain state departments and certain state and local officials and employees; to provide for certain disqualifications; to prescribe penalties and provide remedies; and to repeal acts and parts of acts,” by amending sections 301, 305, 509, 604, 714, and 719 (MCL 38.2301, 38.2305, 38.2509, 38.2604, 38.2664, and 38.2669), sections 305 and 714 as amended by 2002 PA 95, section 604 as amended by 2018 PA 335, and section 719 as added by 1996 PA 523, and by adding sections 509a and 714a.

The People of the State of Michigan enact:

Sec. 301. (1) The retirement system shall direct the actuary to do all of the following:

(a) Determine the annual level percent of payroll contribution rate to finance the benefits provided under this act by actuarial valuation under subsections (2) and (3), and on the basis of the risk assumptions that the retirement board and the department adopt after consultation with the state treasurer and the actuary.

(b) Make an annual actuarial valuation of the retirement system in order to determine the actuarial condition of the retirement system and the required contribution to the retirement system.

(c) Make an annual actuarial gain-loss experience study of the retirement system in order to determine the financial effect of variations of actual retirement system experience from projected experience.

(d) Beginning with the state fiscal year ending September 30, 2021 and for each subsequent fiscal year, assume a rate of return on investments and a discount rate not to exceed 6% for pension and 6% for retiree health care.

(e) Beginning with the state fiscal year ending September 30, 2028 and for each subsequent fiscal year, use layered amortization. As used in this subdivision, “layered amortization” means a fixed and closed period that separately layers the different components to be amortized over a fixed period not to exceed 10 years, as it emerges. The amortization period for layered amortization must use a level dollar amortization method. The normal cost contribution for any fiscal year must not be less than the normal cost component of the actuarially determined contribution.

(2) The actuary shall compute the contribution rate for monthly benefits payable in the event of death of a member before retirement or the disability of a member using an individual projected benefit entry age normal cost method of valuation.

(3) The actuary shall compute the contribution rate for benefits other than those described in subsection (2) using an individual projected benefit entry age normal actuarial cost method. The contribution rate for service that may be rendered in the current year, which is known as the normal cost contribution rate, is equal to the aggregate amount of individual entry age normal costs divided by 1% of the aggregate amount of active members' valuation compensation. The contribution rate for unfunded service rendered on or before the last day of the fiscal year, which is known as the unfunded actuarial accrued liability contribution rate, is equal to the aggregate amount of unfunded actuarial accrued liabilities divided by 1% of the actuarial present value over a period not to exceed 40 years of projected benefit compensation, where unfunded actuarial accrued liabilities are equal to the actuarial present value of benefits reduced by the actuarial present value of future normal costs and the actuarial value of assets on the last day of the fiscal year.

(4) As part of each 5-year experience study, the retirement board and department must adopt, on the recommendation of the actuary and in accordance with all applicable actuarial standards of practice, the most current mortality tables that are most appropriate for the characteristics of the population.

Sec. 305. (1) Each member, on taking office and while he or she remains in office, shall make contributions to the retirement system according to the applicable plan member classification as follows:

(a) Except as otherwise provided in section 509a, a plan 1 member or a plan 2 member shall contribute 5% of the member's compensation. From this contribution, the retirement system shall deposit an amount equal to 2.0% of the member's compensation into the reserve for health benefits for hospital and medical-surgical and sick care benefits as provided in section 509.

(b) A plan 3a member, a plan 3b member, or a plan 5 member shall contribute 3.5% of the member's compensation.

(c) A plan 3c member, a plan 4 member, a plan 6 member, or a plan 7 member shall contribute 7% of the member's compensation. However, a plan 6 member shall not contribute more than \$980.00 annually.

(2) The retirement board shall determine the manner in which member contributions are paid. Except as otherwise provided in this section, the retirement system shall credit member contributions when received to the reserve for member contributions.

(3) On written notice from the executive secretary to the state court administrator, the state treasurer shall withhold payment of the amount due from the salary standardization payment payable to a county or district control unit for member contributions that are not received by the retirement system within 60 days after the due date.

Sec. 509. (1) The retirement system shall pay the premium for hospital and medical-surgical and sick care benefits for a retirant who, as a member, served after January 1, 1983 as a justice of the supreme court, judge of the court of appeals, or a state official, or for his or her retirement allowance beneficiary who elects coverage in the state group health insurance plan, to the same extent as is provided for retirants and retirement allowance beneficiaries of the state employees' retirement system created by the state employees' retirement act, 1943 PA 240, MCL 38.1 to 38.69.

(2) The retirement system shall pay the premium under subsection (1) only if section 305(1)(a) requires member contributions for hospital and medical-surgical and sick care benefits.

(3) This section does not apply to an individual who first became a member or qualified participant after March 4, 2023, or to a qualified member who made an election to opt out of health insurance coverage under section 509a. As used in this subsection, "qualified member" means that term as defined in section 509a.

Sec. 509a. (1) For a member or qualified participant who is not eligible for any future health insurance coverage premium from the retirement system or for a qualified member who made the election under subsection (3), in addition to the contributions under section 714(3), the member or qualified participant may contribute up to 4% of the member's or qualified participant's salary to Tier 2. A member or qualified participant who makes a contribution under this subsection may make additional contributions to his or her Tier 2 account as permitted by the department and the internal revenue code.

(2) A member or qualified participant is vested in contributions made to his or her Tier 2 account under subsection (1) according to the vesting provisions under section 715.

(3) Except as otherwise provided in this section, beginning March 6, 2023 and ending at 5 p.m. Eastern Standard Time on May 12, 2023, the retirement system shall permit each qualified member to make an election to opt out of health insurance coverage premiums that would have been paid by the retirement system under sections 509 and 719 and opt into the Tier 2 account provisions of this section effective May 28, 2023.

A qualified member who makes the election under this subsection shall cease accruing years of service credit for purposes of calculating a portion of the health insurance coverage premiums that would have been paid by the retirement system under sections 509 and 719 as if that coverage continued to apply. The election under this subsection must be completed in a manner and by methods as determined by the retirement system.

(4) A qualified member who does not make the election under subsection (3) continues to be eligible for the payment of health insurance coverage premiums by the retirement system under sections 509 and 719 and is not eligible for the Tier 2 account provisions of this section. The retirement system shall treat an individual who is not a qualified member, who is a former member on March 4, 2023, and who is reemployed by an employer after March 4, 2023 in the same manner as a member described in this subsection who did not make the election under subsection (3).

(5) The retirement system shall calculate an amount to be credited to a Tier 2 account for each qualified member who makes the election under subsection (3). The amount must equal the contributions made by the qualified member for hospital and medical-surgical and sick care benefits under section 305(1)(a) or 714(6), as applicable. A qualified member who makes the election under subsection (3) shall cease making contributions into the reserve for health benefits for hospital and medical-surgical and sick care benefits under section 305(1)(a) or 714(6), as applicable, as determined by the retirement system, but no later than the first payroll date after May 27, 2023. The amount calculated under this subsection must be deposited as an employer contribution into the qualified member's Tier 2 account as determined by the retirement system, but no later than the first payroll date after August 1, 2023. A qualified member is immediately 100% vested in amounts deposited to his or her Tier 2 account under this subsection.

(6) A qualified member who has a break in service and is reemployed retains the same election made under this section before the break in service. If the qualified member did not make the election under subsection (3), the qualified member shall continue to make the contributions as provided under section 305(1)(a) or 714(6), as applicable.

(7) Instead of any other health insurance coverage premium that might have been paid by the retirement system under sections 509 and 719, a credit to a health reimbursement account within the trust created under the public employee retirement health care funding act, 2010 PA 77, MCL 38.2731 to 38.2747, must be made by the retirement system in the amounts and to the qualified participants who are plan 1 or plan 2 members as follows:

(a) Two thousand dollars to an individual who first became a qualified participant after March 4, 2023, who is 60 years of age or older, and who has at least 10 years of service at his or her first termination of employment.

(b) One thousand dollars to an individual who first became a member or qualified participant after March 4, 2023, who is less than 60 years of age, and who has at least 10 years of service at his or her first termination of employment.

(8) The retirement system shall determine a method to implement subsections (3) to (7), including a method for crediting the amounts in those subsections to comply with any restrictions imposed by the internal revenue code. Notwithstanding any provision of this act to the contrary, the Tier 2 plan provisions of this section must be implemented by the department as soon as feasible but not later than August 1, 2023.

(9) Subsections (3) to (7) do not apply to a member or qualified participant who is eligible for the payment of health insurance coverage premiums by the retirement system as a result of benefits provided under section 507.

(10) As used in this section:

(a) "Qualified member" means a member or qualified participant who meets all of the following requirements:

(i) He or she first became a member or qualified participant before March 5, 2023.

(ii) He or she has earned service credit in the 12 months ending March 4, 2023 or was on an approved professional services or military leave of absence on March 4, 2023.

(iii) He or she is a plan 1 member or plan 2 member who is eligible to qualify for future health insurance coverage premium from the retirement system.

(b) "Salary" means that term as defined in section 706.

Sec. 604. (1) This section is enacted under section 401(a) of the internal revenue code, 26 USC 401, which imposes certain administrative requirements and benefit limitations for qualified governmental plans. This state intends that the retirement system be a qualified pension plan created in trust under section 401 of the internal revenue code, 26 USC 401, and that the trust be an organization exempt from taxation under section 501 of the internal revenue code, 26 USC 501. The department shall administer the retirement system to fulfill the intent of this subsection.

(2) The retirement system must be administered in compliance with the provisions of section 415 of the internal revenue code, 26 USC 415, and regulations under that section that are applicable to governmental plans and, beginning January 1, 2010, applicable provisions of the final regulations issued by the Internal Revenue Service on April 5, 2007. Employer-financed benefits provided by the retirement system under this act must not exceed the applicable limitations set forth in section 415 of the internal revenue code, 26 USC 415, as adjusted by the commissioner of internal revenue under section 415(d) of the internal revenue code, 26 USC 415, to reflect cost-of-living increases, and the retirement system shall adjust the benefits, including benefits payable to retirants and retirement allowance beneficiaries, subject to the limitation each calendar year to conform with the adjusted limitation. For purposes of section 415(b) of the internal revenue code, 26 USC 415, the applicable limitation applies to aggregated benefits received from all qualified pension plans for which the office of retirement services coordinates administration of that limitation. If there is a conflict between this section and another section of this act, this section prevails.

(3) The assets of the retirement system must be held in trust and invested for the sole purpose of meeting the legitimate obligations of the retirement system and must not be used for any other purpose. The assets must not be used for or diverted to a purpose other than for the exclusive benefit of the members, vested former members, retirants, and retirement allowance beneficiaries before satisfaction of all retirement system liabilities.

(4) The retirement system shall return post-tax member contributions made by a member and received by the retirement system to a member on retirement, under Internal Revenue Service regulations and approved Internal Revenue Service exclusion ratio tables.

(5) The required beginning date for retirement allowances and other distributions must not be later than April 1 of the calendar year following the calendar year in which the employee attains age 70-1/2 or April 1 of the calendar year following the calendar year in which the employee retires. The required minimum distribution requirements imposed by section 401(a)(9) of the internal revenue code, 26 USC 401, apply to this act and must be administered in accordance with a reasonable and good-faith interpretation of the required minimum distribution requirements for all years in which the required minimum distribution requirements apply to this act.

(6) If the retirement system is terminated, the interest of the members, vested former members, retirants, and retirement allowance beneficiaries in the retirement system is nonforfeitable to the extent funded as described in section 411(d)(3) of the internal revenue code, 26 USC 411, and related Internal Revenue Service regulations applicable to governmental plans.

(7) Notwithstanding any other provision of this act to the contrary that would limit a distributee's election under this act, a distributee may elect, at the time and in the manner prescribed by the retirement board, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover. This subsection applies to distributions made after December 31, 1992.

(8) For purposes of determining actuarial equivalent retirement allowances under sections 506(1)(a) and (b) and 602, the actuarially assumed interest rate must be determined by the director of the department and the retirement board in consultation with the actuary using the mortality tables adopted by the department and the retirement board. Beginning with the state fiscal year ending September 30, 2023 and for each subsequent state fiscal year, for the purposes of determining actuarial equivalent retirement allowances under sections 506(1)(a) and (b) and 602, the actuarial assumed interest rate and discount rate must not exceed 6.75%.

(9) Notwithstanding any other provision of this act, the compensation of a member of the retirement system must be taken into account for any year under the retirement system only to the extent that it does not exceed the compensation limit established in section 401(a)(17) of the internal revenue code, 26 USC 401, as adjusted by the commissioner of internal revenue. This subsection applies to an individual who first becomes a member of the retirement system after September 30, 1996.

(10) Notwithstanding any other provision of this act, contributions, benefits, and service credit with respect to qualified military service will be provided under the retirement system in accordance with section 414(u) of the internal revenue code, 26 USC 414. This subsection applies to all qualified military service after December 11, 1994. Beginning on January 1, 2007, in accordance with section 401(a)(37) of the internal revenue code, 26 USC 401, if a member dies while performing qualified military service, for purposes of determining any death benefits payable under this act, the member is treated as having resumed and then terminated employment on account of death.

Sec. 714. (1) This section is subject to the vesting requirements of section 715.

(2) A qualified participant's employer shall contribute to the qualified participant's account in Tier 2 an amount equal to 4% of the qualified participant's salary.

(3) A qualified participant may periodically elect to contribute up to 3% of his or her salary to his or her Tier 2 account. The qualified participant's employer shall make an additional contribution to the qualified participant's Tier 2 account in an amount equal to the contribution made by the qualified participant under this subsection.

(4) A qualified participant may make contributions in addition to contributions made under subsection (3) to his or her Tier 2 account as permitted by the state treasurer and the internal revenue code. The qualified participant's employer shall not match contributions made by the qualified participant under this subsection.

(5) A qualified participant who makes a written election under section 701a may elect to contribute up to 6% of his or her salary to his or her Tier 2 account. In lieu of employer contributions under subsection (3), the qualified participant's employer shall make an additional contribution to the qualified participant's Tier 2 account in an amount equal to the contribution made by the qualified participant under this subsection. This subsection applies for a period as determined by the department that equals the time in which a Tier 1 member was not able to make contributions to the Tier 2 plan because of the temporary restraining order issued in the case of *Michigan Judges Assn v Treasurer of Michigan*, opinion of the United States District Court for the Eastern District of Michigan (Case No. 98-DT-72771-CV).

(6) Except as otherwise provided in section 509a, beginning January 1, 2002, a qualified participant who is a plan 1 member or a plan 2 member, on taking office and while he or she remains in office, shall contribute 2.0% of the qualified participant's compensation to the retirement system. The retirement system shall deposit the contribution under this subsection into the reserve for health benefits for hospital and medical-surgical and sick care benefits as provided in section 719.

Sec. 714a. Tier 2 and tax-deferred accounts are subject to the following terms and conditions:

(a) Before December 2, 2023, the retirement system shall design an automatic enrollment feature that provides that unless a qualified participant who makes contributions under section 714(3) elects to contribute a lesser amount, the qualified participant shall contribute the amount required to qualify for all eligible matching contributions under this act. The retirement system shall implement this automatic enrollment feature as soon as administratively feasible, but no later than 12 months after the effective date of the amendatory act that added this section.

(b) In addition to elective employee contributions to Tier 2 or a tax-deferred account, this state may use elective employee contributions to the state 457 deferred compensation plan as a basis for making employer matching contributions to Tier 2 or a tax-deferred account.

(c) Employer matching contributions do not have to be made to the same plan or account to which the elective employee contributions were contributed as the basis for the matching contributions.

(d) Elective employee contributions may not be used as the basis for more than an equivalent amount of employer matching contributions.

(e) The retirement system shall design and implement a method to determine the proper allocation of employer matching contributions based on elective employee contributions as provided in this section.

Sec. 719. (1) A former qualified participant may elect health insurance benefits in the manner prescribed in this section if he or she meets both of the following requirements:

(a) The former qualified participant is vested in health insurance coverage under section 715(2).

(b) The former qualified participant meets or exceeds the benefit commencement age used in the actuarial present value calculation under section 702 and the service requirements that would have applied to that former participant under Tier 1 for receiving health insurance coverage under section 509, if that former participant was a member of Tier 1.

(2) A former qualified participant who is eligible to elect health insurance coverage under subsection (1) may elect health insurance coverage in a health benefit plan or plans as authorized by section 509, or in another plan as provided in subsection (6). A former qualified participant who is eligible to elect health insurance coverage under subsection (1) may also elect health insurance coverage for his or her health benefit dependents, if any. A surviving health benefit dependent of a deceased former qualified participant who is eligible to elect health insurance coverage under subsection (1) may elect health insurance coverage in the manner prescribed in this section.

(3) Except as otherwise provided in subsection (6), an individual who elects health insurance coverage under this section will become a member of a health insurance coverage group authorized under section 509.

(4) For a former qualified participant who is eligible to elect health insurance coverage under subsection (1) and who is vested in those benefits under section 715(2)(a), and for his or her health benefit dependents, this state shall pay a portion of the health insurance premium as calculated under this subsection on a cash disbursement method. An individual described in this subsection who elects health insurance coverage under this section shall

pay to the retirement system the remaining portion of the health insurance coverage premium not paid by this state under this subsection. The portion of the health insurance coverage premium paid by this state under this subsection must be 50% of the payments for health insurance coverage under section 509 if the former qualified participant has 4 years of service; 75% of the payments for health insurance coverage under section 509 if the former qualified participant has 5 years of service; or 90% of the payments for health insurance coverage under section 509 if the former qualified participant has 6 years of service. If the individual elects the health insurance coverage provided under section 509, this state shall transfer its portion of the amount calculated under this subsection to the reserve for health benefits created by section 214.

(5) For a former qualified participant who is eligible to elect health insurance coverage under subsection (1) and who is vested in those benefits under section 715(2)(b), and for his or her health benefit dependents, this state shall pay a portion of the health insurance premium as calculated under this subsection on a cash disbursement method. An individual described in this subsection who elects health insurance coverage under this section shall pay to the retirement system the remaining portion of the health insurance coverage premium not paid by this state under this subsection. The portion of the health insurance coverage premium paid by this state under this subsection must be equal to the premium amounts paid on behalf of retirants of Tier 1 for health insurance coverage under section 509. If the individual elects the health insurance coverage provided under section 509, this state shall transfer its portion of the amount calculated under this subsection to the reserve for health benefits created by section 214.

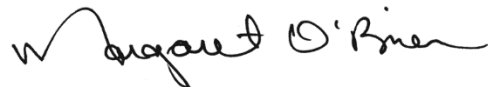
(6) A former qualified participant or health benefit dependent who is eligible to elect health insurance coverage under this section and who elects health insurance coverage under a different plan than the plan authorized under section 509 may elect to have an amount up to the amount of the retirement system's share of the monthly health insurance premium subsidy provided in this section paid by the retirement system directly to the other health insurance plan or to a medical savings account established under section 220 of the internal revenue code, 26 USC 220, to the extent allowed by law or under the provisions and procedures of Tier 2.

(7) If the department of technology, management, and budget receives notification from the United States Internal Revenue Service that this section or any portion of this section will cause the retirement system to be disqualified for tax purposes under the internal revenue code, then the portion that will cause the disqualification does not apply.

(8) This section does not apply to an individual who first became a member or qualified participant after March 4, 2023 or to a qualified member who made an election to opt out of health insurance coverage under section 509a. As used in this subsection, "qualified member" means that term as defined in section 509a.



Clerk of the House of Representatives



Secretary of the Senate

Approved _____

Governor