

STATE OF OKLAHOMA

1st Session of the 48th Legislature (2001)

SENATE BILL 664

By: Wilkerson

AS INTRODUCED

An Act relating to retirement; amending 47 O.S. 1991, Sections 2-300, as last amended by Section 5, Chapter 377, O.S.L. 2000 and 2-305.2, as amended by Section 2, Chapter 157, O.S.L. 1993 (47 O.S. Supp. 2000, Sections 2-300 and 2-305.2), which relate to the Oklahoma Law Enforcement Retirement System; updating references; allowing choice of exemption from participation for eligible agency directors; allowing election to cease participation; providing effective date of election; providing cessation of contributions upon election; requiring termination for retirement; providing cessation of certain earnings and cost of living increases; providing how certain amounts shall be paid; removing non-participating service in retirement benefit calculation; providing exception for mandatory termination; providing for codification; providing an effective date; and declaring an emergency.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 47 O.S. 1991, Section 2-300, as last amended by Section 5, Chapter 377, O.S.L. 2000 (47 O.S. Supp. 2000, Section 2-300), is amended to read as follows:

Section 2-300. As used in this act:

1. "System" means the Oklahoma Law Enforcement Retirement System;
2. "Act" means Sections 2-300 through 2-313 of this title;
3. "Board" means the Oklahoma Law Enforcement Retirement Board of the System;
4. "Executive Director" means the managing officer of the System employed by the Board;
5. "Fund" means the Oklahoma Law Enforcement Retirement Fund;

6. "Member" means all law enforcement officers of the Oklahoma Highway Patrol and the ~~State Capitol~~ Patrol Section of the Oklahoma Highway Patrol Division of the Department of Public Safety and all commissioned officers in the Gunsmith/Ammunition Reloader Division of the Department of Public Safety who have obtained certification from the Council on Law Enforcement Education and Training, the Oklahoma State Bureau of Investigation, the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control and the Oklahoma Alcoholic Beverage ~~Control Board~~ Laws Enforcement Commission designated to perform duties in the investigation and prevention of crime and the enforcement of the criminal laws of this state, and members of the Communications Division to include radio technicians, tower technicians and commissioned officers of the Lake Patrol Division of the Oklahoma Department of Public Safety, park rangers of the Oklahoma Tourism and Recreation Department and inspectors of the Oklahoma State Board of Pharmacy, and any park manager or park supervisor of the Oklahoma Tourism and Recreation Department who was employed in such a position prior to July 1, 1985, and who elects on or before September 1, 1996, to participate in the System. An eligible agency director may choose to be exempt from membership in the System or may become a member, provided the eligibility requirements are met, at the time of employment. A member does not include a "leased employee" or independent contractor, including a leased employee, as defined under Section 414(n)(2) of the Internal Revenue Code of 1986, as amended. Any individual who contracts with the Board for services to be performed as a leased employee or an independent contractor shall not be a member regardless of any classification as a common-law employee by the Internal Revenue Service or any other governmental agency, or any court of competent jurisdiction, provided that all persons who shall be offered a position of a law enforcement officer shall participate in the System upon the person meeting the requisite post-offer-pre-

employment physical examination standards which shall be subject to the following requirements:

- a. all such persons shall be of good moral character, free from deformities, mental or physical conditions, or disease and alcohol or drug addiction which would prohibit the person from performing the duties of a law enforcement officer,
- b. said physical-medical examination shall pertain to age, sight, hearing, agility and other conditions the requirements of which shall be established by the Board,
- c. the person shall be required to meet the conditions of this subsection prior to the beginning of actual employment but after an offer of employment has been tendered by a participating employer,
- d. the Board shall have authority to deny or revoke membership of any person submitting false information in such person's membership application, and
- e. the Board shall have final authority in determining eligibility for membership in the System, pursuant to the provisions of this subsection;

7. "Normal retirement date" means the date at which the member is eligible to receive the unreduced payments of the member's accrued retirement benefit. Such date shall be the first day of the month coinciding with or following the date the member:

- a. completes twenty (20) years of vesting service; or
- b. attains sixty-two (62) years of age with ten (10) years of vesting service; or
- c. attains sixty-two (62) years of age, if:
 - (1) the member has been transferred to this System from the Oklahoma Public Employees Retirement System on or after July 1, 1981; and

- (2) the member would have been vested had the member continued to be a member of the Oklahoma Public Employees Retirement System;

Effective July 1, 1989, notwithstanding any other provision contained herein to the contrary, in no event shall commencement of distribution of the accrued retirement benefit of a member be delayed beyond April 1 of the calendar year following the later of:

1. The calendar year in which the member reaches seventy and one-half (70 1/2) years of age; or

2. The actual retirement date of the member. The preceding sentence does not allow deferral of benefit commencement beyond the age of sixty-five (65).

A member who was required to join the System effective July 1, 1980, because of the transfer of the employing agency from the Oklahoma Public Employees Retirement System to the System, and was not a member of the Oklahoma Public Employees Retirement System on the date of such transfer shall be allowed to receive credit for prior law enforcement service rendered to this state, if the member is not receiving or eligible to receive retirement credit or benefits for such service in any other public retirement system, upon payment to the System of the employee contribution the member would have been subject to had the member been a member of the System at the time, plus five percent (5%) interest. Service credit received pursuant to this paragraph shall be used in determining the member's retirement benefit, and shall be used in determining years of service for retirement or vesting purposes;

8. "Actual paid base salary" means the salary received by a member, excluding payment for any accumulated leave or uniform allowance. Salary shall include any amount of nonelective salary reduction under Section 414(h) of the Internal Revenue Code of 1986;

9. "Final average salary" means the average of the highest thirty (30) consecutive complete months of actual paid gross salary.

Gross salary shall include any amount of elective salary reduction under Section 457 of the Internal Revenue Code of 1986 and any amount of nonelective salary reduction under Section 414(h) of the Internal Revenue Code of 1986. Only salary on which required contributions have been made may be used in computing the final average salary.

In addition to other applicable limitations, and notwithstanding any other provision to the contrary, for plan years beginning on or after July 1, 1996, the annual gross salary of each "Noneligible Member" taken into account under the System shall not exceed the Omnibus Budget Reconciliation Act of 1993 (OBRA '93) annual salary limit. The OBRA '93 annual salary limit is One Hundred Fifty Thousand Dollars (\$150,000.00), as adjusted by the Commissioner for increases in the cost of living in accordance with Section 401(a)(17)(B) of the Internal Revenue Code of 1986, as amended. The annual salary limit in effect for a calendar year applies to any period, not exceeding twelve (12) months, over which salary is determined ("determination period") beginning in such calendar year. If a determination period consists of fewer than twelve (12) months, the OBRA '93 salary limit will be multiplied by a fraction, the numerator of which is the number of months in the determination period, and the denominator of which is twelve (12). For purposes of this section, a "Noneligible Member" is any member who first became a member during a plan year commencing on or after July 1, 1996.

For plan years beginning on or after July 1, 1996, any reference in the System to the annual salary limit under Section 401(a)(17) of the Internal Revenue Code of 1986, as amended, shall mean the OBRA '93 salary limit set forth in this provision.

If gross salary for any prior determination period is taken into account in determining a Noneligible Member's benefits accruing in the current plan year, the gross salary for that prior determination

period is subject to the OBRA '93 annual salary limit in effect for that prior determination period. For this purpose, for determination periods beginning before the first day of the first plan year beginning on or after July 1, 1996, the OBRA '93 annual salary limit is One Hundred Fifty Thousand Dollars (\$150,000.00).

Effective July 1, 1989, through June 30, 1997, in determining the gross salary of a member for purposes of this limitation, the rules of Section 414(q)(6) of the Internal Revenue Code of 1986, as amended, shall apply, except in applying such rules, the term "family" shall include only the spouse of the member and any lineal descendants of the member who have not attained age nineteen (19) before the close of the year. If, as a result of the application of such rules, the adjusted annual salary limitation is exceeded, then the limitation shall be prorated among the affected individuals in proportion to each such individual's gross salary as determined under this section prior to the application of this limitation.

The family member aggregation rules set forth in the preceding paragraph shall apply only to plan years beginning prior to July 1, 1997;

10. "Credited service" means the period of service used to determine the amount of benefits payable to a member. Credited service shall consist of the period during which the member participated in the System or the predecessor Plan as an active employee in an eligible membership classification, plus any service prior to the establishment of the predecessor Plan which was credited under the predecessor Plan and for officers of the Oklahoma State Bureau of Investigation and the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control who became members of the System on July 1, 1980, any service credited under the Oklahoma Public Employees Retirement System as of June 30, 1980, and for members of the Communications and Lake Patrol Divisions of the Oklahoma Department of Public Safety, who became members of the

System on July 1, 1981, any service credited under the predecessor Plan or the Oklahoma Public Employees Retirement System as of June 30, 1981, and for law enforcement officers of the Oklahoma Alcoholic Beverage ~~Control Board~~ Laws Enforcement Commission who became members of the System on July 1, 1982, any service credited under the Oklahoma Public Employees Retirement System as of June 30, 1982, and for park rangers of the Oklahoma Tourism and Recreation Department who became members of the System on July 1, 1985, any service credited under the Oklahoma Public Employees Retirement System as of June 30, 1985, and for inspectors of the Oklahoma State Board of Pharmacy who became members of the System on July 1, 1986, any service credited under the Oklahoma Public Employees Retirement System as of June 30, 1986, for law enforcement officers of the State Capitol Patrol Section of the Oklahoma Highway Patrol Division of the Department of Public Safety who became members of the System effective July 1, 1993, any service credited under the Oklahoma Public Employees Retirement System as of June 30, 1993, and for all commissioned officers in the Gunsmith/Ammunition Reloader Division of the Department of Public Safety who became members of the System effective July 1, 1994, any service credited under the Oklahoma Public Employees Retirement System as of June 30, 1994, and for the park managers or park supervisors of the Oklahoma Tourism and Recreation Department who were employed in such a position prior to July 1, 1985, and who elect to become members of the System effective September 1, 1996, any service transferred pursuant to subsection C of Section 2-309.6 of this title. Effective August 5, 1993, an authorized leave of absence shall include a period of absence pursuant to the Family and Medical Leave Act of 1993;

11. "Disability" means a physical or mental condition which, in the judgment of the Board, totally and presumably permanently prevents the member from engaging in the usual and customary duties of the occupation of the member and thereafter prevents the member

from performing the duties of any occupation or service for which the member is qualified by reason of training, education or experience. A person is not under a disability when capable of performing a service to the employer, regardless of occupation, providing the salary of the employee is not diminished thereby;

12. "Limitation year" means the year used in applying the limitations of Section 415 of the Internal Revenue Code of 1986, which year shall be the calendar year;

13. "Line of duty" means any action which a member whose primary function is crime control or reduction or enforcement of the criminal law is obligated or authorized by rule, regulations, condition of employment or service, or law to perform, including those social, ceremonial, or athletic functions to which the member is assigned, or for which the member is compensated, by the agency the member serves;

14. "Personal injury" or "injury" means any traumatic injury as well as diseases which are caused by or result from such an injury, but not occupational diseases;

15. "Catastrophic nature" means consequences of an injury that permanently prevent an individual from performing any gainful work; and

16. "Traumatic injury" means a wound or a condition of the body caused by external force, including injuries inflicted by bullets, explosives, sharp instruments, blunt objects or other physical blows, chemicals, electricity, climatic conditions, infectious diseases, radiation, and bacteria, but excluding stress and strain.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2-300A of Title 47, unless there is created a duplication in numbering, reads as follows:

After June 30, 2001, an agency director who is currently participating in the system may make an irrevocable written election to cease participation in the System even though such agency

director has not ceased employment. This election may be made regardless if participation in the Oklahoma Law Enforcement Deferred Option Plan has begun. Beginning with the month following the written election, employer and employee retirement contributions shall cease. Such agency director, however, shall not be allowed to retire without a termination of employment. Interest earnings and any eligible cost of living adjustments shall cease in the Oklahoma Law Enforcement Deferred Option Plan beginning with the month following the written election. Amounts accumulated in the Deferred Option Plan shall be paid according to subsection F of section 2-305.2 of this title upon retirement. Credited service, for retirement benefit calculations, shall not include non-participating service made as an agency director while not participating in the System.

SECTION 3. AMENDATORY 47 O.S. 1991, Section 2-305.2, as amended by Section 2, Chapter 157, O.S.L. 1993 (47 O.S. Supp. 2000, Section 2-305.2), is amended to read as follows:

Section 2-305.2 A. In lieu of terminating employment and accepting a service retirement pension pursuant to Section 2-305 of Title 47 of the Oklahoma Statutes, any member of the Oklahoma Law Enforcement Retirement System who has not less than twenty (20) years of creditable service and who is eligible to receive a service retirement pension may elect to participate in the Oklahoma Law Enforcement Deferred Option Plan and defer the receipts of benefits in accordance with the provisions of this section.

B. For purposes of this section, creditable service shall include service credit reciprocally recognized pursuant to Sections 2-300 through 2-305.1 of Title 47 of the Oklahoma Statutes but for eligibility purposes only.

C. The duration of participation in the Oklahoma Law Enforcement Deferred Option Plan for a member shall not exceed five (5) years. At the conclusion of a member's participation in the

Oklahoma Law Enforcement Deferred Option Plan, except for members who have made an election pursuant to section 2 of this act, the member shall terminate employment with all state law enforcement agencies as an officer, and shall start receiving the member's accrued monthly retirement benefit from the System.

D. When a member begins participation in the Oklahoma Law Enforcement Deferred Option Plan, the contribution of the employee shall cease. The employer contributions shall continue to be paid in accordance with Section 2-304 of Title 47 of the Oklahoma Statutes. Employer contributions for employees who elect the Oklahoma Law Enforcement Deferred Option Plan shall be credited equally to the Oklahoma Law Enforcement Retirement System and to the Oklahoma Law Enforcement Deferred Option Plan. The monthly retirement benefits that would have been payable had the member elected to cease employment and receive a service retirement shall be paid into the Oklahoma Law Enforcement Deferred Option Plan account.

E. 1. A member who participates in this plan shall be eligible to receive cost of living increases.

2. A member who participates in this plan shall earn interest at a rate of two percentage points below the rate of return of the investment portfolio of the System, but no less than the actuarial assumed interest rate as certified by the actuary in the yearly evaluation report of the actuary. The interest shall be credited to the individual account balance of the member on an annual basis.

F. A participant in the Oklahoma Law Enforcement Deferred Option Plan shall receive, at the option of the participant:

1. A lump sum payment from the account equal to the option account balance of the participant, payable to the participant;

2. A lump sum payment from the account equal to the option account balance of the participant, payable to the annuity provider

which shall be selected by the participant as a result of the research and investigation of the participant; or

3. Any other method of payment if approved by the Board.

G. If the participant dies during the period of participation in the Oklahoma Law Enforcement Deferred Option Plan, a lump sum payment equal to the account balance of the participant shall be paid in accordance with Section 2-306.3 of Title 47 of the Oklahoma Statutes.

H. The Oklahoma Law Enforcement Deferred Option Plan shall not be implemented until October 1, 1990, or when the Board obtains a ruling from the Internal Revenue Service which affirmatively states that said plan shall be treated as a qualified plan for federal income tax purposes, which ever comes last.

SECTION 4. This act shall become effective July 1, 2001.

SECTION 5. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

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