

STATE OF OKLAHOMA

1st Session of the 50th Legislature (2005)

CONFERENCE COMMITTEE
SUBSTITUTE
FOR ENGROSSED
HOUSE BILL NO. 1858

By: Morgan (Fred), Blackwell
and Smithson of the House

and

Coffee of the Senate

CONFERENCE COMMITTEE SUBSTITUTE

An Act relating to retirement; amending 20 O.S. 2001, Sections 1102, as amended by Section 1, Chapter 438, O.S.L. 2002, 1102A, as amended by Section 6, Chapter 536, O.S.L. 2004, 1103, as amended by Section 1, Chapter 539, O.S.L. 2004, 1103A, as amended by Section 8, Chapter 536, O.S.L. 2004 and 1104, as last amended by Section 10, Chapter 536, O.S.L. 2004 (20 O.S. Supp. 2004, Sections 1102, 1102A, 1103, 1103A and 1104), which relate to the Uniform Retirement System for Justices and Judges; modifying terms; authorizing retired Justice or judge to become employed for certain purposes without reduction of retirement benefits; providing for optional disability benefit; providing for cessation of disability benefit; providing disability benefit calculation; providing for treatment of credited service upon return to work; amending applicability for certain surviving spouse benefit; deleting obsolete language; providing survivor options in lieu of certain benefit; allowing certain refund or transfer for certain members; requiring certain application; establishing provisions for transfer; expressing legislative intent; providing for treatment of certain excess contributions; requiring certain notice prior to any transfer; providing for certain irrevocable waiver; allowing survivor option in lieu of refund; providing for promulgation of rules; allowing survivor option for certain members; stating period to elect survivor option; requiring certain designation; allowing election with respect to vested benefits; mandating certain option without consent; providing how option calculation shall be based; establishing provisions for Option A and Option B survivor options; providing option election upon death of certain members; providing when death benefits would be payable; providing option election eligibility for certain survivors of deceased members; providing effective date and increase to employee contribution; amending outline; prohibiting certain additional payments upon an option election; amending benefit formula to reflect option election, if any; providing for codification; and providing an effective date.

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

SECTION 1. AMENDATORY 20 O.S. 2001, Section 1102, as amended by Section 1, Chapter 438, O.S.L. 2002 (20 O.S. Supp. 2004, Section 1102), is amended to read as follows:

Section 1102. Any Justice or Judge of the Supreme Court, Court of Criminal Appeals, Workers' Compensation Court, Court of Appeals or District Court who serves as Justice or judge of any of said courts in the State of Oklahoma for a period of eight (8) years or longer and upon reaching or passing the age of sixty-five (65) years, or who serves for a period of ten (10) years or longer and upon reaching or passing the age of sixty (60) years, or whose sum of years of service and age equal or exceeds eighty (80), after completing eight (8) years of judicial service, shall be eligible to receive the retirement benefits herein provided, and, if such Justice or judge is still serving in such capacity when the above requirements are complied with, ~~he~~ the Justice or judge may elect to retire and may elect whether such retirement shall become effective immediately or at a specified time within ~~his~~ the term of the Justice or judge or at the expiration of ~~his~~ the term of the Justice or judge, by filing a written declaration of ~~his~~ the desire of the Justice or judge to retire with the Governor and the Court Administrator, and the Governor shall endorse ~~his~~ approval of the Governor thereon if the conditions herein specified exist. For the purpose of Section 1101 et seq. of this title, years to be credited for retirement shall be as follows: Any Justice or judge who, at the time this act was originally passed in 1968, was serving as a Justice or judge of a court that is included in the State Supernumerary Judges Act shall receive credit for retirement under this act for each year said Justice or judge has served in any court of record, and any Justice or judge who, on January 12, 1969, was not serving as a Justice or judge of a court that was included in the State Supernumerary Judges Act shall receive credit for each

year ~~he has served~~ of service as a Justice or judge of a court of record, providing that ~~he~~ the Justice or judge has served a period of two (2) years after assuming the office as a Justice or judge of one or more of the above-mentioned courts, and, in determining the periods of time above mentioned, a major fraction of a year shall count as a whole year. Any Justice of the Supreme Court or Judge of the Court of Criminal Appeals, Workers' Compensation Court, Court of Appeals, or District Court, who has not served as a Justice or judge of a court of record of the State of Oklahoma or a court that was a court of record of the State of Oklahoma for a period of eight (8) years, and who on January 13, 1969, was a member of the Oklahoma Public Employees Retirement System, or the retirement system of any instrumentality of the state, or the retirement system of any county, shall not be required or permitted to become a member of, or participant in, The Uniform Retirement System for Judges and Justices provided for by Sections 1101 - 1107, inclusive, of this title, unless within ninety (90) days after May 7, 1969, ~~he~~ the Justice or judge elected to so become and waived or forfeited any right to which ~~he~~ the Justice or judge might have been entitled under the Oklahoma Public Employees Retirement System or the retirement system of any instrumentality of the state, or of a county, except the right of a refund of ~~his~~ any accumulated contributions of the Justice or judge without interest thereon. No Justice of the Supreme Court or Judge of the Court of Criminal Appeals, Workers' Compensation Court, Court of Appeals, or District Court, who has served as a Justice or judge of a court of record of the State of Oklahoma or a court that was a court of record of the State of Oklahoma for a period of eight (8) years or more prior to January 13, 1969, and who was a member of the Oklahoma Public Employees Retirement System or a county retirement system on January 12, 1969, and who on January 13, 1969, was a Justice or judge in any of the aforementioned courts, shall be required to make an election

as to which retirement system ~~he~~ the Justice or judge shall be a member of, and nothing in this act shall be construed so as to require any such Justice or judge to forfeit any right to which ~~he~~ the Justice or judge might be entitled under the Oklahoma Public Employees Retirement System or county retirement system to which ~~he~~ the Justice or judge may have a vested or contractual interest but ~~he~~ the Justice or judge will be required to participate in The Uniform Retirement System for Judges and Justices provided by Sections 1101 - 1107, inclusive, of this title. No Justice or judge of the above-mentioned courts shall be eligible to enter the Oklahoma Public Employees Retirement System after January 13, 1969. Upon approval by the Governor of an election of any Justice or judge to retire as authorized by Section 1101 et seq. of this title, the office held by such Justice or judge shall become vacated immediately or at the specified time within ~~his~~ the term of the Justice or judge, or at the expiration of ~~his~~ the term of the Justice or judge in accordance with the election of the Justice or judge desiring retirement status, and any such vacancy so created shall be filled in the manner provided by law and the Constitution. Provided, however, if any retired Justice or judge should be elected or appointed to any political or judicial office, ~~his~~ the retirement compensation of the Justice or judge shall be suspended during the period of time that ~~he~~ the Justice or judge holds such office and be reinstated upon ~~his~~ leaving such office. Notwithstanding any other provision of this section or any other provision of law to the contrary, a retired Justice or judge shall be permitted to be employed by any college or university within The Oklahoma State System of Higher Education as a full-time or part-time member of the faculty or as a teacher in any common school or career and technology education entity without suspension of retirement benefits.

SECTION 2. AMENDATORY 20 O.S. 2001, Section 1102A, as amended by Section 6, Chapter 536, O.S.L. 2004 (20 O.S. Supp. 2004, Section 1102A), is amended to read as follows:

Section 1102A. A. Any Justice or judge of the Supreme Court, Court of Criminal Appeals, Court of Appeals, Workers' Compensation Court or district court who has reached the age of fifty-five (55) years and has served as Justice or judge of any of the named courts in the State of Oklahoma for a period of fifteen (15) continuous years or longer, next preceding application for disability retirement, may receive as retirement disability compensation a maximum monthly benefit in an amount equal to four percent (4%) of the average monthly salary received by the member when the member served as a Justice or judge based on the last three (3) years of active service multiplied by the total number of years of service on the named courts. But in no event may such retirement disability of a Justice or judge who incurs a disability before July 1, 2004, exceed seventy percent (70%) or one hundred percent (100%), for a Justice or judge who incurs a disability after June 30, 2004, of the average monthly salary based on the highest three (3) years of active service and found applicable to such Justice or judge at the time of retirement, when such Justice or judge is ordered to retire from office with compensation by the Court on the Judiciary for the reason of physical disability preventing the proper performance of official duty. The decree of the Court on the Judiciary shall set forth the amount of compensation the Justice or judge so retired shall receive, which compensation shall be payable out of the State Judicial Retirement Fund. The only optional form of benefit payment available for disability benefits is Option A, as provided for in Section 3 of this act. Option A must be elected in accordance with the provisions of Section 3 of this act. Benefit payments shall cease upon the member's recovery from disability prior to the normal retirement date. Future benefits, if any, shall be paid based upon

length of service and compensation as of the date of disability. In the event that disability ceases and the member returns to employment within the System, credited service to the date of disability shall be restored, and future benefits shall be determined accordingly.

B. For members of the System who are married on September 1, 2005, and who are still making the additional three percent (3%) surviving spouse contributions as of that date, the surviving spouse benefit shall be as follows:

1. The surviving spouse of a deceased Justice or judge having at least eight (8) years of service shall be entitled to receive survivor benefits in the amount herein prescribed, if married to the decedent ninety (90) days prior to the termination of the member's employment as a Justice or judge and has been so married to the member continuously for a period of at least three (3) years immediately preceding his death, provided that the required additional contributions are made~~;~~;

2. Survivor benefits shall be payable in accordance with Section 1001 et seq. of this title if the surviving spouse has then attained the age of sixty (60) years or, if then under such age, immediately upon his attainment of that age or if the surviving spouse is disabled or when the deceased member served for a minimum of ten (10) years and the Workers' Compensation Court determines that the death arose out of and in the course of employment or when the deceased member would have met the requirements for retirement, whichever occurs first~~;~~;

3. The amount of the benefits the surviving spouse may receive shall be as follows:

- a. fifty percent (50%) of the amount of benefits the deceased Justice or judge was receiving immediately prior to the member's death, or

- b. fifty percent (50%) of the amount the deceased Justice or judge would have been entitled to receive on the date of the member's death, the annual rate of such benefits to be determined without regard to whether the deceased Justice or judge had attained minimum retirement age at the time of the member's death, and
- c. such additional amounts as the surviving spouse is eligible for in accordance with Section 1103A of this title; or

~~4. Remarriage of a surviving spouse, prior to the spouse reaching the age of sixty (60) years, shall disqualify the spouse for the receipt of survivor benefits. The disqualification of survivor benefits, pursuant to this paragraph, shall not apply to remarriages on or after July 1, 1998.~~

In lieu of the benefits and provisions provided in paragraphs 1, 2, and 3, of this subsection, the members described in this subsection may elect upon retirement an Option A or B as provided in Section 3 of this act.

C. Members who are single as of September 1, 2005, and who made the additional three percent (3%) spousal contribution at any time prior to that date, may apply to receive a refund or transfer of such additional contributions and an unreduced retirement benefit. To receive this refund, the qualifying member must file an application for the refund with the System by December 1, 2005. The applicable contributions shall be transferred pursuant to this subsection and the procedures established by the Board. It is the intent of the Legislature that the excess contributions which were paid on a pretax basis and considered as picked up under the provisions of Section 414(h) (2) of the Internal Revenue Code of 1986 shall be transferred directly to an account established for the employee in the Oklahoma State Employees Deferred Savings Incentive Plan, created under 401 (a) of the Internal Revenue Code of 1986.

The excess contributions which were paid on an after-tax basis and not considered picked up under the provisions of Section 414(h)(2) of the Internal Revenue Code of 1986 shall be transferred to the Deferred Compensation Plan created under 457 of the Internal Revenue Code of 1986. The provisions for refund or transfer contained in this subsection shall not take effect until the Board receives official written notice that this distribution satisfies the tax qualification requirements for governmental plans applicable to such refunds or transfers as specified in the Internal Revenue Code of 1986, as amended from time to time, and as applicable to governmental plans and the relevant regulatory provisions and guidance related thereto. The application and receipt of a refund under this subsection shall operate as an irrevocable waiver of any survivor benefit available under this act. In lieu of receiving a refund of contributions the member may elect at retirement to have a survivor option as provided in Section 3 of this act with a reduced benefit. The Board of Trustees of the Uniform Retirement System for Justices and Judges shall promulgate any rules necessary to implement the provisions of this subsection.

D. Single members at the time of retirement who never made the additional three percent (3%) spousal contribution, as provided in Section 1103 of this title, shall receive an unreduced retirement benefit or may elect at retirement to have a survivor option as provided in Section 3 of this act with a reduced benefit. The Board of Trustees of the Uniform Retirement System for Justices and Judges shall promulgate any rules necessary to implement the provisions of this subsection.

E. Members who are married as of September 1, 2005, but who are not paying the additional three percent (3%) surviving spousal contribution as a result of waiver and consent of the spouse, shall be eligible for a survivor option as provided in Section 3 of this act.

F. Members who join the system after August 31, 2005, shall be eligible for a survivor option as provided in Section 3 of this act.

~~G.~~ G. Any Justice, judge or surviving spouse meeting the requirements for disability retirement benefits as provided in this section may make application to the Court on the Judiciary for a determination of disability retirement benefits. The Justice, judge or surviving spouse making application shall be required by the Court on the Judiciary to be examined by two recognized physicians selected by the Court to determine the extent of disability of such applicant. The examining physicians shall furnish the Court a detailed written report of the disability of the examined applicant. The Court shall then determine whether the applicant, if the member is a Justice or judge, has a disability preventing the proper performance of the member's official duties. If the applicant is a surviving spouse the court shall determine whether such surviving spouse is disabled. If the Court determines that the applicant is disabled, the Court shall order disability retirement benefits as provided by this section. The Court shall require all persons receiving disability benefits to submit to a physical examination once each year for the three (3) years following the start of disability benefits. The Court shall select two physicians to examine such persons and if they are found no longer disabled by the examining physicians the Court shall terminate such disability benefits. The Justice, judge or surviving spouse shall then be entitled to receive such other benefits as they may be entitled to by law.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1102C of Title 20, unless there is created a duplication in numbering, reads as follows:

A. Except as otherwise provided for in this section and Section 1104.2 of Title 20 of the Oklahoma Statutes, members who join the Uniform Retirement System for Justices and Judges on September 1,

2005, or thereafter, may elect to have the retirement benefit paid under one of the options provided in this section in lieu of having it paid in the form stated in Section 1104 of Title 20 of the Oklahoma Statutes. The election of an option must be made prior to the member's retirement date or to receipt of a benefit after termination of service with a vested benefit. A specific person must be designated as joint annuitant at the time of the election of Option A or B. Election of an option is available with respect to the vested benefit. All retirement benefits of a married member shall be paid pursuant to the Option A plan as provided for in this section unless the spouse of a member consents in writing for the unreduced benefits to be paid as provided for in Section 1104 of Title 20 of the Oklahoma Statutes or pursuant to Option B as provided for in this section.

B. The amount of retirement benefit payable under an option shall be based on the age and sex of the member and the age and sex of the joint annuitant at the retirement date, and shall be such amount as to be the actuarial equivalent of the retirement benefit otherwise payable under Section 1104 of Title 20 of the Oklahoma Statutes.

C. The retirement options are:

Option A. Joint and one-half to joint annuitant survivor.

A reduced retirement benefit is payable to the retiree during his or her lifetime with one-half of that amount continued to the joint annuitant during such joint annuitant's remaining lifetime, if any, after the death of the retiree. If the named joint annuitant dies at any time after the member's retirement date, but before the death of the retiree, the retiree shall return to the unreduced retirement benefit, including any postretirement benefit increases, the member would have received

had the member not selected Option A. The benefit shall be determined at the date of death of the named joint annuitant. This increase shall become effective the first day of the month following the date of death of the named joint annuitant, and shall be payable for the retiree's remaining lifetime. The retiree shall notify the Uniform Retirement System for Justices and Judges of the death of the named joint annuitant in writing. In the absence of the written notice being filed by the member notifying the Uniform Retirement System for Justices and Judges of the death of the named joint annuitant within six (6) months of the date of death, nothing in this subsection shall require the Uniform Retirement System for Justices and Judges to pay more than six (6) months of retrospective benefits increase.

Option B. Joint and survivor. A reduced retirement benefit is payable to the retiree during his or her lifetime with that amount continued to the joint annuitant during the joint annuitant's remaining lifetime, if any, after the death of the retiree. If the named joint annuitant dies at any time after the member's retirement date, but before the death of the retiree, the retiree shall return to the unreduced retirement benefit, including any postretirement benefit increases, the member would have received had the member not selected Option B. The benefit shall be determined at the date of death of the named joint annuitant. This increase shall become effective the first day of the month following the date of death of the named joint

annuitant, and shall be payable for the retiree's remaining lifetime. The retiree shall notify the Uniform Retirement System for Justices and Judges of the death of the named joint annuitant in writing. In the absence of such written notice being filed by the member notifying the Uniform Retirement System for Justices and Judges of the death of the named joint annuitant within six (6) months of the date of death, nothing in this subsection shall require the Uniform Retirement System for Justices and Judges to pay more than six (6) months of retrospective benefits increase.

D. If a member who is eligible to retire in accordance with the provisions of this section or Section 1104 of Title 20 of the Oklahoma Statutes but is not actually retired or is eligible to vest or has elected a vested benefit dies, the member's spouse may elect to receive benefits as a joint annuitant under Option B, calculated as if the member retired on the date of death, in lieu of receiving the member's accumulated contributions. However, no benefits shall be payable before the date the deceased member would have met the requirements for a normal or early retirement. The provisions of this paragraph shall be applicable to a surviving spouse of a deceased member who died prior to the effective date of this act, but only if no benefits or distributions have been previously paid.

SECTION 4. AMENDATORY 20 O.S. 2001, Section 1103, as amended by Section 1, Chapter 539, O.S.L. 2004 (20 O.S. Supp. 2004, Section 1103), is amended to read as follows:

Section 1103. A. ~~Each~~ Effective September 1, 2005, each Justice or judge who is a member of The Uniform Retirement System for Justices and Judges shall have ~~five percent (5%)~~ eight percent (8%) of his or her current monthly salary withheld by the State of Oklahoma and deposited in a fund in the State Treasury which is

hereby created and shall be known as the Oklahoma Judicial Retirement Fund. ~~Each married Justice or judge shall bring his or her spouse within the provisions of Section 1101 et seq. of this title extending certain benefits to his or her surviving spouse, and he or she shall have eight percent (8%) of his or her current monthly salary withheld by the State of Oklahoma and deposited in said fund, unless the spouse waives such surviving spouse provisions in writing as provided in Section 1103A of this title.~~ If a Justice or judge shall cease to be a Justice or judge of the above-mentioned courts, for any reason, before he or she has accumulated eight (8) years of accredited service, or dies after he or she has accumulated eight (8) years' service and having no survivor benefit, then all the contributions retained from his or her salary shall be paid to him or her or his or her named beneficiary, or his or her estate in case of no named beneficiary, and he or she shall have no further claim against the State of Oklahoma for retirement pay for his or her services to date.

B. Notwithstanding any provision to the contrary, the compensation taken into account for any judge or Justice in determining contributions or benefit accruals for any plan year is limited to the annual compensation limit under Section 401(a)(17) of the federal Internal Revenue Code.

C. Upon death of a retired judge who has no survivor benefits, there shall be paid to his or her named beneficiary, or his or her estate in case of no named beneficiary, an amount equal to the excess, if any, of his or her accumulated contributions over the sum of all retirement benefit payments made.

D. Upon the death of a retired member, the benefit payment for the month in which the retired member died, if not previously paid, shall be made to the estate of the member or to the member's beneficiary if there is no estate. Such benefit payment shall be

made in an amount equal to a full monthly benefit payment regardless of the day of the month in which the retired member died.

SECTION 5. AMENDATORY 20 O.S. 2001, Section 1103A, as amended by Section 8, Chapter 536, O.S.L. 2004 (20 O.S. Supp. 2004, Section 1103A), is amended to read as follows:

~~Section 1103A. A. Within thirty (30) days of becoming a member of the System each married member of the Judicial Retirement System shall file with the System a written statement to bring his or her spouse under survivor benefit provisions of this act. Members who are unmarried at the effective date of this act or at the time of their initial employment shall have thirty (30) days from the date of their marriage to file with the System a written statement to bring the spouse under the survivor benefit provisions of this act.~~

~~B. Effective July 1, 1999, each married member of the System shall bring his or her spouse under the survivor benefit provisions of this act if said election has not previously been made.~~

~~C. Contributions to provide the survivor benefits as set forth in Section 1103 of this title shall be paid by the Justice or judge beginning no later than July 1, 1999, or the first day of the month following the date of the marriage thereafter.~~

~~D. The provisions for survivor benefits required by this section may be waived by consent of the spouse, if waiver is made in writing within thirty (30) days from July 1, 1999, if said election has not previously been made, or within thirty (30) days following the date of the marriage thereafter. The waiver of the surviving spouse provision is irrevocable.~~

~~E.—1.~~ Effective October 1, 2004, any surviving spouse of a deceased Justice or judge shall be eligible to receive an additional monthly survivor benefit provided:

~~a. 1. the~~ The Justice or judge retired or died on or after July 1, 1999, ~~and;~~

~~b.~~ 2. ~~the~~ The Justice or judge paid the required contributions to provide the survivor benefits as set forth in Section 1103 of this title prior to July 1, 1999, ~~and;~~

~~e.~~ 3. ~~these~~ Those required additional contributions have not been refunded to the Justice or judge or to a beneficiary, ~~and;~~

~~d.~~ 4. ~~the~~ The Justice or judge and the surviving spouse remained continuously married, ~~and;~~

~~e.~~ 5. ~~the~~ The Justice or judge continued to make such required contributions to provide the survivor benefits up to the time of retirement or death.

The additional amounts described in subsection B of this section shall not be made to the surviving spouse if the member elects an Option A or Option B survivor option pursuant to Section 3 of this act.

~~2.~~ B. Any ~~such~~ eligible surviving spouse of a deceased Justice or judge, as described in subsection A of this section, shall receive an additional monthly survivor benefit, based upon the length of payments of the required contributions to provide the survivor benefits as set forth in Section 1103 of this title which were made prior to July 1, 1999, as follows:

Length of Payments	Survivor Benefit % Increase
1 month - 9 years, 11 months	5%
10 years - 19 years, 11 months	10%
20 years or more	15%

~~3.~~ C. The survivor benefit increase shall be in addition to the fifty percent (50%) survivor benefit otherwise payable pursuant to Section 1102A of this title. An eligible surviving spouse of a deceased Justice or judge who, on September 30, 2004, is receiving benefits from the Uniform Retirement System for Justices and Judges shall be entitled to receive the survivor benefit increase set forth above beginning with the October 1, 2004, monthly benefit payment. An eligible surviving spouse of a deceased Justice or judge who

begins receiving benefits from the Uniform Retirement System for Justices and Judges after September 30, 2004, shall be entitled to receive the survivor benefit increase set forth above beginning with the first month of survivor benefit payments.

SECTION 6. AMENDATORY 20 O.S. 2001, Section 1104, as last amended by Section 10, Chapter 536, O.S.L. 2004 (20 O.S. Supp. 2004, Section 1104), is amended to read as follows:

Section 1104. ~~A.~~ Each justice or judge who is a member of The Uniform Retirement System for Justices and Judges upon retirement after June 30, 2004, shall be entitled to receive as retirement compensation, until changed by the Legislature, an annual amount, each monthly payment of which shall be in an amount equal to four percent (4%) of the average monthly salary received by him or her as a justice or judge based on the highest three (3) years of active service multiplied by the number of total years of service and reduced according to the elected survivor option, if any. The amounts of compensation reported to the Oklahoma Public Employees Retirement System for the Uniform Retirement System for Justices and Judges, by the Office of Personnel Management prior to June 30, 2004, may be conclusively presumed as valid regarding the source of the compensation reported as salary for purposes of the accuracy of the employees' contributions and the computation of salary for the calculation of benefits. This presumption shall not include any computation error made by the Office of Personnel Management or the Oklahoma Public Employees Retirement System on behalf of the Uniform Retirement System for Justices and Judges. Provided, however, that no justice or judge retiring after June 30, 2004, may receive a monthly retirement benefit in excess of one hundred percent (100%) of the average monthly salary based on the highest three (3) years of active service and found applicable to such justice or judge at the time of retirement. Retirement compensation shall be payable monthly out of the State Judicial Retirement Fund by warrants

prepared by the Executive Director of the Public Employees Retirement System and issued by the State Treasurer.

~~B. Effective July 1, 1997, each justice or judge who was a member of The Uniform Retirement System for Justices and Judges at the time of retirement who initially began receiving benefits before July 1, 1995, or their eligible surviving spouse, may elect on or before July 1, 1998, to receive as retirement compensation, prospectively only from the date of election, an annual amount, each monthly payment of which shall be in an amount equal to four percent (4%) of the average monthly salary received by the justice or judge based on the last three (3) years of active service multiplied by the number of total years of service of the justice or judge. Provided, however, that no justice or judge may receive a monthly retirement benefit in excess of seventy percent (70%) of the average monthly salary based on the last three (3) years of active service and found applicable to the justice or judge at the time of retirement. No surviving spouse shall receive a retirement benefit pursuant to this subsection in excess of what is allowed under this act. Retirement compensation shall be payable monthly out of the State Judicial Retirement Fund by warrants prepared by the Executive Director of the Oklahoma Public Employees Retirement System and issued by the State Treasurer.~~

SECTION 7. This act shall become effective September 1, 2005.

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