

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 1st Session of the 58th Legislature (2021)

4 ENGROSSED SENATE
5 BILL NO. 889

By: Weaver of the Senate

and

West (Josh) of the House

6
7
8
9 An Act relating to law enforcement pension; amending
10 47 O.S. 2011, Section 2-300, as amended by Section 1,
11 Chapter 383, O.S.L. 2015 (47 O.S. Supp. 2020, Section
12 2-300), which relates to definitions; modifying age
13 for certain required distributions; modifying age at
14 which certain distribution may be delayed;
15 prohibiting delaying certain benefit beyond certain
16 age; and declaring an emergency.

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

18 SECTION 1. AMENDATORY 47 O.S. 2011, Section 2-300, as
19 amended by Section 1, Chapter 383, O.S.L. 2015 (47 O.S. Supp. 2020,
20 Section 2-300), is amended to read as follows:

21 Section 2-300. As used in Section 2-300 et seq. of this title:

22 1. "System" means the Oklahoma Law Enforcement Retirement
23 System;

24 2. "Act" means Section 2-300 et seq. of this title;

 3. "Board" means the Oklahoma Law Enforcement Retirement Board
of the System;

1 4. "Executive Director" means the managing officer of the
2 System employed by the Board;

3 5. "Fund" means the Oklahoma Law Enforcement Retirement Fund;

4 6. a. "Member" means:

5 (1) all commissioned law enforcement officers of the
6 Oklahoma Highway Patrol Division of the
7 Department of Public Safety who have obtained
8 certification from the Council on Law Enforcement
9 Education and Training, and all cadets of a
10 Patrol Academy of the Department of Public
11 Safety,

12 (2) law enforcement officers and criminalists of the
13 Oklahoma State Bureau of Investigation,

14 (3) law enforcement officers of the Oklahoma State
15 Bureau of Narcotics and Dangerous Drugs Control
16 designated to perform duties in the investigation
17 and prevention of crime and the enforcement of
18 the criminal laws of this state,

19 (4) law enforcement officers of the Oklahoma
20 Alcoholic Beverage Laws Enforcement Commission
21 designated to perform duties in the investigation
22 and prevention of crime and the enforcement of
23 the criminal laws of this state,

- 1 (5) employees of the Communications Section of the
2 Oklahoma Highway Patrol Division, radio
3 technicians, and tower technicians of the
4 Department of Public Safety, who are employed in
5 any such capacity as of June 30, 2008, and who
6 remain employed on or after July 1, 2008, until a
7 termination of service, or until a termination of
8 service with an election of a vested benefit from
9 the System, or until retirement. Effective July
10 1, 2008, a person employed for the first time as
11 an employee of the Department of Public Safety in
12 the Communications Division as an information
13 systems telecommunication technician of the
14 Department of Public Safety shall not be a member
15 of the System,
- 16 (6) park rangers of the Oklahoma Tourism and
17 Recreation Department and any park manager or
18 park supervisor of the Oklahoma Tourism and
19 Recreation Department, who was employed in such a
20 position prior to July 1, 1985, and who elects on
21 or before September 1, 1996, to participate in
22 the System, and
- 23 (7) inspectors of the Board of Pharmacy.
- 24

1 b. Effective July 1, 1987, a member does not include a
2 "leased employee" as defined under Section 414(n) (2)
3 of the Internal Revenue Code of 1986, as amended.
4 Effective July 1, 1999, any individual who agrees with
5 the participating employer that the individual's
6 services are to be performed as a leased employee or
7 an independent contractor shall not be a member
8 regardless of any classification as a common-law
9 employee by the Internal Revenue Service or any other
10 governmental agency, or any court of competent
11 jurisdiction.

12 c. All persons who shall be offered a position of a
13 commissioned law enforcement officer as an employee of
14 one of the agencies described in subparagraph a of
15 this paragraph shall participate in the System upon
16 the person meeting the requisite post-offer-pre-
17 employment physical examination standards which shall
18 be subject to the following requirements:

19 (1) all such persons shall be of good moral
20 character, free from deformities, mental or
21 physical conditions, or disease and alcohol or
22 drug addiction which would prohibit the person
23 from performing the duties of a law enforcement
24 officer,

- 1 (2) the physical-medical examination shall pertain to
2 age, sight, hearing, agility and other conditions
3 the requirements of which shall be established by
4 the Board,
- 5 (3) the person shall be required to meet the
6 conditions of this subsection prior to the
7 beginning of actual employment but after an offer
8 of employment has been tendered by a
9 participating employer,
- 10 (4) the Board shall have authority to deny or revoke
11 membership of any person submitting false
12 information in such person's membership
13 application, and
- 14 (5) the Board shall have final authority in
15 determining eligibility for membership in the
16 System, pursuant to the provisions of this
17 subsection;

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

- 22 a. completes twenty (20) years of vesting service, or
23 b. attains sixty-two (62) years of age with ten (10)
24 years of vesting service, or

1 c. attains sixty-two (62) years of age, if:

2 (1) the member has been transferred to this System
3 from the Oklahoma Public Employees Retirement
4 System on or after July 1, 1981, and

5 (2) the member would have been vested had the member
6 continued to be a member of the Oklahoma Public
7 Employees Retirement System.

8 With respect to distributions under the System made for calendar
9 years beginning on or after January 1, 2005, the System shall apply
10 the minimum distribution incidental benefit requirements, incidental
11 benefit requirements, and minimum distribution requirements of
12 Section 401(a)(9) of the Internal Revenue Code of 1986, as amended,
13 in accordance with the final regulations under Section 401(a)(9) of
14 the Internal Revenue Code of 1986, as amended, ~~which were issued in~~
15 ~~April 2002 and June 2004~~ including Treasury Regulations Sections
16 1.401(a)(9)-1 through 1.401(a)(9)-9; provided that for individuals
17 who attain seventy and one-half (70 1/2) years of age after December
18 31, 2019, distributions shall be made when the individual attains
19 seventy-two (72) years of age, pursuant to the provisions of the
20 SECURE Act of 2019, Pub. L. 116-94, Sections 401(a)(9)(B)(iv)(I),
21 401(a)(9)(C)(i)(I) and 401(a)(9)(C)(ii)(I) of the Internal Revenue
22 Code of 1986, as amended, notwithstanding any provision of the
23 System to the contrary. With respect to distributions under the
24 System made for calendar years beginning on or after January 1,

1 2001, through December 31, 2004, the System shall apply the minimum
2 distribution requirements and incidental benefit requirements of
3 Section 401(a)(9) of the Internal Revenue Code of 1986, as amended,
4 in accordance with the regulations under Section 401(a)(9) of the
5 Internal Revenue Code of 1986, as amended, which were proposed in
6 January 2001, notwithstanding any provision of the System to the
7 contrary.

8 Effective July 1, 1989, notwithstanding any other provision
9 contained herein to the contrary, in no event shall commencement of
10 distribution of the accrued retirement benefit of a member be
11 delayed beyond April 1 of the calendar year following the later of:
12 (1) the calendar year in which the member reaches seventy and one-
13 half (70 1/2) years of age for a member who attains this age before
14 January 1, 2020, or, for a member who attains this age after January
15 1, 2020, the calendar year in which the member reaches seventy-two
16 (72) years of age; or (2) the actual retirement date of the member.
17 ~~The preceding sentence does not allow deferral of~~ A member electing
18 to defer the commencement of retirement benefits pursuant to Section
19 2-308.1 of this title may not defer the benefit commencement beyond
20 the age of sixty-five (65).

21 Effective September 8, 2009, notwithstanding anything to the
22 contrary of the System, the System, which as a governmental plan
23 (within the meaning of Section 414(d) of the Internal Revenue Code
24 of 1986, as amended), is treated as having complied with Section

1 401(a)(9) of the Internal Revenue Code of 1986, as amended, for all
2 years to which Section 401(a)(9) of the Internal Revenue Code of
3 1986, as amended, applies to the System if the System complies with
4 a reasonable and good faith interpretation of Section 401(a)(9) of
5 the Internal Revenue Code of 1986, as amended.

6 A member who was required to join the System effective July 1,
7 1980, because of the transfer of the employing agency from the
8 Oklahoma Public Employees Retirement System to the System, and was
9 not a member of the Oklahoma Public Employees Retirement System on
10 the date of such transfer shall be allowed to receive credit for
11 prior law enforcement service rendered to this state, if the member
12 is not receiving or eligible to receive retirement credit or
13 benefits for such service in any other public retirement system,
14 upon payment to the System of the employee contribution the member
15 would have been subject to had the member been a member of the
16 System at the time, plus five percent (5%) interest. Service credit
17 received pursuant to this paragraph shall be used in determining the
18 member's retirement benefit, and shall be used in determining years
19 of service for retirement or vesting purposes;

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

1 9. "Final average salary" means the average of the highest
2 thirty (30) consecutive complete months of actual paid gross salary.
3 Gross salary shall include any amount of elective salary reduction
4 under Section 457 of the Internal Revenue Code of 1986, as amended,
5 and any amount of nonelective salary reduction under Section 414(h)
6 of the Internal Revenue Code of 1986, as amended. Effective July 1,
7 1992, gross salary shall include any amount of elective salary
8 reduction under Section 125 of the Internal Revenue Code of 1986, as
9 amended. Effective July 1, 1998, gross salary shall include any
10 amount of elective salary reduction not includable in the gross
11 income of the member under Section 132(f)(4) of the Internal Revenue
12 Code of 1986, as amended. Effective July 1, 1998, for purposes of
13 determining a member's compensation, any contribution by the member
14 to reduce his or her regular cash remuneration under Section
15 132(f)(4) of the Internal Revenue Code of 1986, as amended, shall be
16 treated as if the member did not make such an election. Only salary
17 on which required contributions have been made may be used in
18 computing the final average salary. Gross salary shall not include
19 severance pay.

20 In addition to other applicable limitations, and notwithstanding
21 any other provision to the contrary, for plan years beginning on or
22 after July 1, 2002, the annual gross salary of each "Noneligible
23 Member" taken into account under the System shall not exceed the
24 Economic Growth and Tax Relief Reconciliation Act of 2001 ("EGTRRA")

1 annual salary limit. The EGTRRA annual salary limit is Two Hundred
2 Thousand Dollars (\$200,000.00), as adjusted by the Commissioner for
3 increases in the cost of living in accordance with Section
4 401(a)(17)(B) of the Internal Revenue Code of 1986, as amended. The
5 annual salary limit in effect for a calendar year applies to any
6 period, not exceeding twelve (12) months, over which salary is
7 determined ("determination period") beginning in such calendar year.
8 If a determination period consists of fewer than twelve (12) months,
9 the EGTRRA salary limit will be multiplied by a fraction, the
10 numerator of which is the number of months in the determination
11 period, and the denominator of which is twelve (12). For purposes
12 of this section, a "Noneligible Member" is any member who first
13 became a member during a plan year commencing on or after July 1,
14 1996.

15 For plan years beginning on or after July 1, 2002, any reference
16 in the System to the annual salary limit under Section 401(a)(17) of
17 the Internal Revenue Code of 1986, as amended, shall mean the EGTRRA
18 salary limit set forth in this provision.

19 Effective January 1, 2008, gross salary for a plan year shall
20 also include gross salary, as described above, for services, but
21 paid by the later of two and one-half (2 1/2) months after a
22 member's severance from employment or the end of the calendar year
23 that includes the date the member terminated employment, if it is a
24 payment that, absent a severance from employment, would have been

1 paid to the member while the member continued in employment with the
2 employer.

3 Effective January 1, 2008, any payments not described above
4 shall not be considered gross salary if paid after severance from
5 employment, even if they are paid by the later of two and one-half
6 (2 1/2) months after the date of severance from employment or the
7 end of the calendar year that includes the date of severance from
8 employment, except payments to an individual who does not currently
9 perform services for the employer by reason of qualified military
10 service within the meaning of Section 414(u)(5) of the Internal
11 Revenue Code of 1986, as amended, to the extent these payments do
12 not exceed the amounts the individual would have received if the
13 individual had continued to perform services for the employer rather
14 than entering qualified military service.

15 Effective January 1, 2008, back pay, within the meaning of
16 Section 1.415(c)-2(g)(8) of the Income Tax Regulations, shall be
17 treated as gross salary for the limitation year to which the back
18 pay relates to the extent the back pay represents wages and
19 compensation that would otherwise be included in this definition.

20 Effective for years beginning after December 31, 2008, gross
21 salary shall also include differential wage payments under Section
22 414(u)(12) of the Internal Revenue Code of 1986, as amended;

23 10. "Credited service" means the period of service used to
24 determine the amount of benefits payable to a member. Credited

1 service shall consist of the period during which the member
2 participated in the System or the predecessor Plan as an active
3 employee in an eligible membership classification, plus any service
4 prior to the establishment of the predecessor Plan which was
5 credited under the predecessor Plan and for law enforcement officers
6 and criminalists of the Oklahoma State Bureau of Investigation and
7 the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control
8 who became members of the System on July 1, 1980, any service
9 credited under the Oklahoma Public Employees Retirement System as of
10 June 30, 1980, and for members of the Communications and Lake Patrol
11 Divisions of the Oklahoma Department of Public Safety, who became
12 members of the System on July 1, 1981, any service credited under
13 the predecessor Plan or the Oklahoma Public Employees Retirement
14 System as of June 30, 1981, and for law enforcement officers of the
15 Alcoholic Beverage Laws Enforcement Commission who became members of
16 the System on July 1, 1982, any service credited under the Oklahoma
17 Public Employees Retirement System as of June 30, 1982, and for park
18 rangers of the Oklahoma Tourism and Recreation Department who became
19 members of the System on July 1, 1985, any service credited under
20 the Oklahoma Public Employees Retirement System as of June 30, 1985,
21 and for inspectors of the Oklahoma State Board of Pharmacy who
22 became members of the System on July 1, 1986, any service credited
23 under the Oklahoma Public Employees Retirement System as of June 30,
24 1986, for law enforcement officers of the Oklahoma Capitol Patrol

1 Division of the Department of Public Safety who became members of
2 the System effective July 1, 1993, any service credited under the
3 Oklahoma Public Employees Retirement System as of June 30, 1993, and
4 for all commissioned officers in the Gunsmith/Ammunition Reloader
5 Division of the Department of Public Safety who became members of
6 the System effective July 1, 1994, any service credited under the
7 Oklahoma Public Employees Retirement System as of June 30, 1994, and
8 for the park managers or park supervisors of the Oklahoma Tourism
9 and Recreation Department who were employed in such a position prior
10 to July 1, 1985, and who elect to become members of the System
11 effective September 1, 1996, any service transferred pursuant to
12 subsection C of Section 2-309.6 of this title and any service
13 purchased pursuant to subsection B of Section 2-307.2 of this title.
14 Effective August 5, 1993, an authorized leave of absence shall
15 include a period of absence pursuant to the Family and Medical Leave
16 Act of 1993;

17 11. "Disability" means a physical or mental condition which, in
18 the judgment of the Board, totally and presumably permanently
19 prevents the member from engaging in the usual and customary duties
20 of the occupation of the member and thereafter prevents the member
21 from performing the duties of any occupation or service for which
22 the member is qualified by reason of training, education or
23 experience. A person is not under a disability when capable of
24

1 performing a service to the employer, regardless of occupation,
2 providing the salary of the employee is not diminished thereby;

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

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

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

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

18 16. "Traumatic injury" means a wound or a condition of the body
19 caused by external force, including injuries inflicted by bullets,
20 explosives, sharp instruments, blunt objects or other physical
21 blows, chemicals, electricity, climatic conditions, infectious
22 diseases, radiation, and bacteria, but excluding stress and strain;
23 and
24

1 17. "Beneficiary" means the individual designated by the member
2 on a beneficiary designation form supplied by the Oklahoma Law
3 Enforcement Retirement System, or, if there is no designated
4 beneficiary or if the designated beneficiary predeceases the member,
5 the estate of the member. If the member's spouse is not designated
6 as the sole primary beneficiary, the member's spouse must sign a
7 consent.

8 SECTION 2. It being immediately necessary for the preservation
9 of the public peace, health or safety, an emergency is hereby
10 declared to exist, by reason whereof this act shall take effect and
11 be in full force from and after its passage and approval.

12
13 COMMITTEE REPORT BY: COMMITTEE ON BANKING, FINANCIAL SERVICES AND
14 PENSIONS, dated 04/05/2021 - DO PASS.
15
16
17
18
19
20
21
22
23
24