

CHAPTER 852

H.B. No. 2308

AN ACT

relating to eligibility for benefits payable by retirement systems for police officers in certain municipalities.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. Section 11(a), Chapter 76, Acts of the 50th Legislature, 1947 (Article 6243g-1, Vernon's Texas Civil Statutes), is amended to read as follows:

(a) A person who becomes a member of the Pension System on or after September 1, 1975, and who has been in the service of the city police department for the period of twenty (20) years may retire on or after July 1, 1993, [~~1988, at the age of fifty (50) years~~] and shall be entitled to a retirement pension of an amount equal to ~~two and one-fourth percent (2.25%)~~ [~~forty five percent (45%)~~] of his base salary per month ~~for the first twenty (20) years of service~~, plus an additional amount equal to two percent (2%) of his base salary per month for each year of service in the police department in excess of twenty (20) years, not to exceed a total pension equal to eighty percent (80%) of base salary, such base salary to be the base salary provided for the classified position in the police department held by the member, provided that if the member has not held the same classified position for three (3) years prior to the date of retirement, the retirement pension shall be based on the average monthly base salary of the member for three (3) years preceding retirement. [~~Except as provided in Subsection (a-1) of this section, no retirement pension may be paid to a member who has not attained the age of fifty (50) years.~~]

SECTION 2. Section 11(a), Article 6243g-3, Revised Statutes, is amended to read as follows:

(a) A member shall become eligible to receive a service pension, after he has terminated employment, on or after July 1, 1993 [1988], on the day he has 20 years of credited service [~~and has attained age 50~~].

SECTION 3. Section 12(a), Article 6243g-3, Revised Statutes, is amended to read as follows:

(a) A member who has 20 years of credited service shall have a vested right to a service pension, computed in accordance with the provisions of this article in effect when he ceased to be an employee, [~~payable beginning with the first month after his attainment of age 50~~].

SECTION 4. Section 2, Chapter 76, Acts of the 50th Legislature, 1947 (Article 6243g-1, Vernon's Texas Civil Statutes), is amended by adding Subdivisions (i) and (j) to read as follows:

(i) "Surviving spouse" means a person who was married to a deceased active member at the time of the member's death, or to a deceased retired member before the member's retirement or for a period of at least five years before the member's death, and whose marriage was recorded in the records of the recorder's office in the county in which the marriage ceremony was performed; or a person who has on file with the Pension Board a

declaration of common-law marriage supported by evidence as required by the Board and signed by the member and the member's common-law spouse before a notary public.

(j) "*Widow*" or "*widower*" means a deceased member's surviving spouse who remains unmarried, never having had another marriage certificate recorded in any county's recording office after the date of the member's death.

SECTION 5. Subdivision (1), Subsection (d), Section 4, Chapter 76, Acts of the 50th Legislature, 1947 (Article 6243g-1, Vernon's Texas Civil Statutes), is amended to read as follows:

(1) The Board shall elect from its membership, annually, a chairman, vice-chairman and secretary. *The chairman must be a person who has been elected to the Board by the members of the police department and the Pension System.* Pursuant to the powers granted under the charter of such city and except as provided by Subdivision (2) of this subsection, the mayor or administrative head of the city shall appoint one or more employees whose positions and salaries shall be fixed by the governing body of the city and who, acting under the direction of the mayor or administrative head of the city and treasurer or director of the treasury, shall keep all of the records of, and perform all of the clerical services for, the Pension System. The salaries of such employees shall be paid by the city.

SECTION 6. Section 4, Chapter 76, Acts of the 50th Legislature, 1947 (Article 6243g-1, Vernon's Texas Civil Statutes), is amended by adding Subsection (j) to read as follows:

(j) *The Pension Board may purchase from an insurer licensed to do business in this state one (1) or more policies of insurance that provide for reimbursement of a Board member, officer, or employee of the Board for liability imposed as damages because of an alleged act, error, or omission committed in the individual's capacity as fiduciary or co-fiduciary of assets of the Pension Fund and for costs and expenses incurred by a fiduciary or co-fiduciary in defense of a claim of an alleged act, error, or omission. A policy of insurance purchased under this subsection may not provide for reimbursement of a Board member, officer, or employee of the Board for liability imposed or expenses incurred because of the individual's personal dishonesty, fraudulent breach of trust, lack of good faith, intentional fraud or deception, or intentional failure to act prudently. The cost of insurance coverage purchased under this subsection shall be paid from money in the Pension Fund.*

SECTION 7. Subsection (b), Section 6, Chapter 76, Acts of the 50th Legislature, 1947 (Article 6243g-1, Vernon's Texas Civil Statutes), is amended to read as follows:

(b) The maximum contribution which may be made to the fund by a member shall be limited to a contribution based on the salary of the second highest classification within the salary schedule of the police department. It is the intent of this section to limit both the contribution and retirement benefits of any member to the salary level of the second highest rank of the police department personnel classification schedule, provided that if the member has not held the same classified position for *three (3) [five (5)] years immediately preceding [prior to] the date of retirement*, the retirement pension shall be based on the average monthly base salary of the member for *three (3) [five (5)] years immediately preceding the date of retirement*.

SECTION 8. Subsections (a-1), (b), (e), and (h), Section 11, Chapter 76, Acts of the 50th Legislature, 1947 (Article 6243g-1, Vernon's Texas Civil Statutes), are amended to read as follows:

~~[(a-1) A person who was a member of the pension system before September 1, 1975, may retire on or after July 1, 1988, regardless of age upon completion of twenty (20) years of service in the city police department and shall be entitled to a retirement pension of an amount equal to forty five percent (45%) of his base salary per month, plus an additional amount equal to two percent (2%) of his base salary per month for each year of service in the police department in excess of twenty (20) years, not to exceed a total pension equal to eighty percent (80%) of base salary, such base salary to be the base salary provided for the classified position in the police department held by the member, provided that if the member has not held the same classified position for three (3) years prior to the date of retirement, the retirement pension shall be based on the average monthly base salary of the member for three (3) years preceding retirement.]~~

(b) If a member of the Police Pension System is promoted or appointed to any classified position above the second highest in the police department personnel classification schedule, that member's contribution and retirement benefits will be computed on the base salary of the second highest classified position in the police department personnel classification schedule, provided that if the member has not held the same classified position for *three (3) [five (5)]* years *immediately preceding [prior to]* the date of retirement, the retirement pension shall be based on the average monthly base salary of the member for *three (3) [five (5)]* years *immediately preceding* retirement. For the purposes of this Act, the position of the Chief of Police shall be considered the highest classified position in the personnel classification schedule in the police department.

(e) Upon a member's completion of twenty (20) years of service in the police department and thereafter, when such member retires, whether such retirement be voluntary or involuntary, such monthly payment shall begin forthwith and continue for the remainder of the member's life. ~~[However, when such member has completed twenty (20) years' service in the police department and if the physicians of Pension Board agree that the member is physically fit to continue his active duties in the police department, they may so certify, and the member may continue in the service of the city police department until the member attains the age of sixty five (65) years, at which time his retirement pension shall be computed as hereinbefore stated.]~~

(h) A retiree who receives a service or disability retirement pension under this Act is entitled to receive an additional amount each month equal to \$88.05, beginning on the person's retirement date or on the effective date of the 1989 amendment of this Act, whichever is later, and continuing until the *end of [person reaches age 65. Thereafter, the payment will be reduced to \$55.38 each month. Payments of an additional amount provided by this subsection end with]* the month in which the *retiree [person]* dies. This amount is intended to defray the retiree's group medical insurance costs and will be paid directly by the Pension Fund ~~[to the insurer providing group coverage, as long as the retiree is covered by the insurance. If a retiree elects not to obtain the coverage or terminates the coverage, the monthly amount will be paid]~~ to the retiree ~~[directly]~~ for the person's lifetime.

SECTION 9. Section 13, Chapter 76, Acts of the 50th Legislature, 1947 (Article 6243g-1, Vernon's Texas Civil Statutes), is amended by amending Subsection (a) and adding Subsection (e) to read as follows:

(a) If any member of the police department who has been retired on allowance because of length of service or disability thereafter dies on or after July 1, 1986, from any cause whatsoever after he has become entitled to an allowance or pension, and leaves a surviving [a] spouse ~~[to whom the member was married prior to his retirement or for a period of at least five (5) years prior to the member's death (hereinafter referred to as the "surviving spouse")]~~, a child or children under the age of eighteen (18) years or a dependent parent, the Board shall order paid a monthly allowance as follows: (a) to the surviving spouse, so long as he or she remains a widow or widower, a sum equal to the allowance which was granted to the member upon service or disability pension based on his length of service in the police department; (b) to the guardian of each child, the sum of twenty-five (\$25) Dollars a month until the child reaches the age of eighteen (18) years or marries; (c) to the guardian of each child, only in case no spouse is entitled to an allowance, the sum the spouse would have received, to be divided equally among the unmarried children under eighteen (18) years; (d) to the dependent parent, only in case no spouse or dependent child is entitled to an allowance, the sum the spouse would have received, to be paid to but one (1) parent and such parent to be determined by the Pension Board.

(e) On the death of a member, inactive member, retired member, or individual receiving a survivor's pension, the Pension Fund shall pay to the beneficiary or beneficiaries or, in the absence of a beneficiary, to the estate of the member, inactive member, retired member, or survivor a lump sum equal to the amount, if any, by which the accumulated member contributions, without interest, exceed the aggregate of all pension payments made.

SECTION 10. Section 1, Article 6243g-3, Revised Statutes, is amended by amending Subdivision (h) and adding Subdivision (p) to read as follows:

(h) "Inactive member" shall mean a member who:

(1) has completed 20 years of credited service, has not attained age 50 [55], and has left the classified service;

(2) is not eligible to begin receiving a service or disability pension; and

(3) has neither applied for nor received a refund of his contributions.

(p) "Surviving spouse" means a person:

(1) who was married to a deceased active member at the time of the member's death, or to a deceased retired member before the member's retirement or for a period of at least five years before the member's death, whose marriage was recorded in the records of the recorder's office in the county in which the marriage ceremony was performed, and who remains unmarried, never having had another marriage certificate recorded in any county's recording office after the date of the member's death; or

(2) who has on file with the pension board a declaration of common-law marriage supported by evidence as required by the board and signed by the member and the member's common-law spouse before a notary public.

SECTION 11. Subsections (b) and (c), Section 17, Article 6243g-3, Revised Statutes, are amended to read as follows:

(b) Effective July 1, 1991, the amount of the monthly service pension payable to a retired member who retires on or after July 1, 1988, is an amount equal to 2.25 percent of the member's base salary per month for the first 20 years of service [45 percent of the member's final compensation per month], plus an additional amount equal to two percent of the member's base salary [final compensation] per month multiplied by the number of years in excess of 20 years, to the nearest one-twelfth of a year, in the member's period of credited service, not to exceed a total pension equal to 80 percent of final compensation, *except that if the member has not held the same classified position for three years immediately preceding the date of retirement, the retirement pension shall be based on the average monthly base salary of the member for three years immediately preceding the date of retirement.*

(c) A retiree who receives a service or disability retirement pension under this article is entitled to receive an additional amount each month equal to \$88.05, beginning on the person's retirement date or on the effective date of the 1989 amendment of this article, whichever is later, and continuing until the end of [person reaches age 65. Thereafter, the payment will be reduced to \$55.38 each month. Payments of an additional amount provided by this subsection end with] the month in which the retiree [person] dies. This amount is intended to defray the retiree's group medical insurance costs and will be paid directly by the pension fund [to the insurer providing group coverage, as long as the retiree is covered by the insurance. If a retiree elects not to obtain the coverage or terminates the coverage, the monthly amount will be paid] to the retiree [directly] for the person's lifetime.

SECTION 12. Article 6243g-3, Revised Statutes, is amended by adding Section 18 to read as follows:

Sec. 18. *MILITARY SERVICE.* (a) *Beginning July 1, 1990, a member of the pension system, while engaged in active military service during a national emergency, is not required to make the monthly payments into the pension fund provided by this article and does not, because of absence as a result of the military service, lose any previous years' service with the city. Military service described by this section is considered continuous service in the police department if, when the member is discharged from the military service, the member returns to the city police department under provisions of the city charter and the military service does not exceed the period of the national emergency.*

(b) *The city shall make its regular monthly payments into the pension fund for each member who is engaged in military service described by this section.*

(c) *If a member of the pension system dies, either directly or indirectly, as a result of the military service, the member's spouse, dependent parent, or other dependents are entitled to receive a refund of any contributions the member made to the pension system.*

SECTION 13. Subsection (a), Section 25, Article 6243g-3, Revised Statutes, is amended to read as follows:

(a) A service pension, disability pension, survivor's pension, death benefit, or withdrawal benefit shall be paid only upon the filing of an application in a form prescribed by the board.

A monthly benefit shall not be payable for any month earlier than the second month preceding the date on which the application for such benefit is filed. If a retired member receives both pension benefits from the fund and a salary as a *classified officer* from the city that cover the same period of time, the retired member shall repay pension benefits received during the period to the fund. On request of the board, the city attorney shall file suit in a court of competent jurisdiction to recover pension benefits owed the fund under this subsection.

SECTION 14. Subsection (a), Section 28, Article 6243g-3, Revised Statutes, is amended to read as follows:

(a) The city shall deduct monthly from the salary or compensation of each member participating in the fund a sum equal to 8.75 [~~seven~~] percent of such salary or compensation, such deduction to be paid by the city to the fund.

SECTION 15. (a) This Act takes effect July 1, 1993, if this Act receives the votes required by Article III, Section 39, of the Texas Constitution for that effective date. If this Act does not receive the votes required by that section for an effective date before the 91st day after the last day of the legislative session, this Act takes effect September 1, 1993.

(b) The changes in law made by this Act apply, except as otherwise specifically provided by this Act, only to contributions that become due and retirements and deaths that occur on or after the effective date of this Act.

(c) The change in law made by this Act in the qualifications of the chairmen of pension boards apply only to terms of chairmen that begin on or after the effective date of this Act.

(d) The change in law made by this Act in the payment of benefits to defray group insurance costs applies to all payments of the benefits that become due on or after the effective date of this Act.

(e) The change in law made by Section 7 of this Act applies only to appointments or promotions that are made on or after the effective date of this Act. An appointment or promotion made before the effective date of this Act is governed by Subsection (b), Section 6, Chapter 76, Acts of the 50th Legislature, 1947 (Article 6243g-1, Vernon's Texas Civil Statutes), as it existed at the time the appointment or promotion was made, and the former law is continued in effect for this purpose.

SECTION 16. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force according to its terms, and it is so enacted.

Passed by the House on May 11, 1993: Yeas 140, Nays 0, 2 present, not voting; passed by the Senate on May 24, 1993: Yeas 31, Nays 0.

Approved June 19, 1993.

Effective July 1, 1993.