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Sixty-second
Legislative Assembly
of North Dakota

FIRST ENGROSSMENT

ENGROSSED HOUSE BILL NO. 1133

Introduced by

Government and Veterans Affairs Committee

(At the request of the Teachers' Fund for Retirement)

A BILL for an Act to amend and reenact subsections 2 and 9 of section 15-39.1-04, subsection 4 of section 15-39.1-10, and sections 15-39.1-10.6, 15-39.1-17, and 15-39.1-20 of the North Dakota Century Code, relating to definitions of beneficiary and salary, incorporation of federal law changes, and modification of death and beneficiary provisions under the teachers' fund for retirement.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsections 2 and 9 of section 15-39.1-04 of the North Dakota Century Code are amended and reenacted are follows:

2. "Beneficiary" means ~~the~~a person, estate, trust, or organization designated in writing by ~~the member except that in the absence of such designation, if the member is married, the member's spouse must be the primary beneficiary. If the member is married, and if the member wishes to name an alternate beneficiary, the member's spouse must consent in writing to the member's designation. If the member dies without having named a contingent beneficiary to receive any remaining benefits due after the death of the beneficiary, the primary beneficiary may name a contingent beneficiary~~a participating member to receive benefits provided by this plan, in receipt of benefits, or otherwise provided under section 15-39.1-17.

9. "Salary" means a member's earnings in eligible employment under this chapter for teaching, supervisory, administrative, and extracurricular services during a school year reported as salary on the member's federal income tax withholding statements plus any salary reduction or salary deferral amounts under 26 U.S.C. 125, 132(f), 401(k), 403(b), 414(h), or 457 in effect on August 1, ~~2009~~2011. "Salary" includes ~~bonus~~ amounts paid to members for performance~~, retention, experience, and other service-related bonuses~~ of duties, unless amounts are conditioned on or made in

anticipation of an individual member's retirement or termination. The annual salary of each member taken into account in determining benefit accruals and contributions may not exceed the annual compensation limits established under 26 U.S.C. 401(a)(17)(B) in effect on August 1, ~~2009~~2011, as adjusted for increases in the cost of living in accordance with 26 U.S.C. 401(a)(17)(B) in effect on August 1, ~~2009~~2011. A salary maximum is not applicable to members whose participation began before July 1, 1996. "Salary" does not include:

a. Fringe benefits or side, nonwage, benefits that accompany or are in addition to a member's employment, including insurance programs, annuities, transportation allowances, housing allowances, meals, lodging, or expense allowances, or other benefits provided by a member's employer.

b. Insurance programs, including medical, dental, vision, disability, life, long-term care, workforce safety and insurance, or other insurance premiums or benefits.

c. Payments for unused sick leave, personal leave, vacation leave, or other unused leave.

d. Early retirement incentive pay, severance pay, or other payments conditioned on or made in anticipation of retirement or termination.

e. Teacher's aide pay, referee pay, busdriver pay, or janitorial pay.

f. Amounts received by a member in lieu of previously employer-provided benefits or payments that are made on an individual selection basis.

g. ~~Recruitment~~Signing bonuses as defined under section 15.1-09-33.1.

h. Other benefits or payments not defined in ~~subdivisions a through g~~this section which the board determines to be ineligible teachers' fund for retirement salary.

SECTION 2. AMENDMENT. Subsection 4 of section 15-39.1-10 of the North Dakota Century Code is amended and reenacted as follows:

4. Retirement benefits must begin no later than April first of the calendar year following the year the member attains age seventy and one-half or April first of the calendar year following the year the member terminates covered employment, whichever is later. Payments must be made over a period of time which does not exceed the life expectancy of the member or the joint life expectancy of the member and the beneficiary. Payment of minimum distributions must be made in accordance with

section 401(a)(9) of the Internal Revenue Code in effect on August 1, ~~2009~~2011, and the regulations issued under that section, as applicable to governmental plans.

SECTION 3. AMENDMENT. Section 15-39.1-10.6 of the North Dakota Century Code is amended and reenacted as follows:

15-39.1-10.6. Benefit limitations.

Benefits with respect to a member participating under former chapter 15-39 or chapter 15-39.1 or 15-39.2 may not exceed the maximum benefits specified under section 415 of the Internal Revenue Code [26 U.S.C. 415] in effect on August 1, ~~2009~~2011, for governmental plans. The maximum dollar benefit applicable under section 415(b)(1)(A) of the Internal Revenue Code must reflect any increases in this amount provided under section 415(d) of the Internal Revenue Code subsequent to August 1, ~~2009~~2011. If a member's benefit is limited by these provisions at the time of retirement or in any subsequent year, the benefit paid in any following calendar year may be increased to reflect all cumulative increases in the maximum dollar limit provided under section 415(d) of the Internal Revenue Code for years after the year payments commenced, but not to more than would have been payable in the absence of the limits under section 415 of the Internal Revenue Code. If an annuitant's benefit is increased by a plan amendment, after the commencement of payments, the member's benefit may not exceed the maximum dollar benefit under section 415(b)(1)(A) of the Internal Revenue Code, adjusted for the commencement age and form of payment, increased as provided by section 415(d) of the Internal Revenue Code. If this plan must be aggregated with another plan to determine the effect of section 415 of the Internal Revenue Code on a member's benefit, and if the benefit must be reduced to comply with section 415 of the Internal Revenue Code, then the reduction must be made pro rata between the two plans, in proportion to the member's service in each plan.

SECTION 4. AMENDMENT. Section 15-39.1-17 of the North Dakota Century Code is amended and reenacted as follows:

15-39.1-17. Death of member.

1. ~~If the death of a member who has not acquired a vested interest should occur prior to retirement, a refund of the member's assessments accumulated with interest must be made to the member's beneficiary, or, if there is no beneficiary, the same must be paid to the surviving children, or if none, to the member's estate; provided, however, that if~~

~~no probate proceedings have been instituted within thirty days of the death of the member, then to the heirs at law who file claim with the fund within one hundred fifty days of the death of the member.~~

~~2.~~ ~~If the death of a member who has acquired a vested interest should occur prior to retirement, then the member's beneficiary may apply for a refund of the member's assessments accumulated with interest. If there is no beneficiary, then the same must be paid to the surviving children, or if none, to the member's estate; provided, however, that if no probate proceedings have been instituted within thirty days of the death of the member, then to the heirs at law who file claim with the fund within one hundred fifty days of the death of the member. In lieu of a refund, the beneficiary may elect either to receive a monthly annuity in accordance with option one under section 15-39.1-16, with the amount of the annuity being determined as though the deceased member had retired under the option on the day benefits commence to the beneficiary; or the beneficiary may elect to receive for sixty months an amount equal to the monthly annuity the member would have received if the member had attained age sixty-five and retired, based on the member's credited service to date of death. If any member under this section has not paid into the fund assessments equal to the amounts required to be paid under section 15-39.1-09, the applicant shall pay any deficiency into the fund before receiving the annuity.~~

~~3.~~ ~~If a member who has received annuity payments other than a reduced retirement allowance as provided in section 15-39.1-16 dies prior to receiving accumulated annuity payments which exceed the assessments paid by the member to the fund plus interest, or a member who has elected a reduced retirement allowance under option one or two in section 15-39.1-16 dies and the person who was nominated to receive that member's reduced allowance also dies prior to receiving, together, accumulated annuity payments which exceed the assessments paid by the member to the fund plus interest, the member's beneficiary shall receive a final payment equal to the assessments the member paid to the fund plus interest as provided in section 15-39.1-20 less the amount of the annuity payments made.~~A member may designate a beneficiary to receive death benefits under the plan when the member dies. If the member is not married, the member may designate a person, estate, or organization as primary beneficiary to receive death benefits. If the member is married, the spouse of the member is the member's primary beneficiary unless the spouse consents in writing to the member's alternate primary beneficiary designation. A member also may designate contingent beneficiaries who are entitled to any remaining death benefits if the primary beneficiary dies before receiving all death benefits provided by this plan. If a member dies without naming a contingent beneficiary, the primary beneficiary may name a contingent beneficiary. If there is no named primary or contingent beneficiary, any death benefits will be paid to the estate.

2. If a member has named more than one primary beneficiary, the board shall pay any death benefits to the primary beneficiaries in the percentages designated by the member or, if the member has not designated a percentage for the beneficiaries, in equal percentages. If one or more of the primary beneficiaries has predeceased the member, the board shall pay the predeceased beneficiary's share to the remaining primary beneficiaries. If no primary beneficiaries remain, any death benefits must be paid to the contingent beneficiaries in the same manner.

a. If before retiring a nonvested member dies, the plan shall pay the member's account value to the member's beneficiary.

b. If before retiring a vested member dies, the member's beneficiary may select a form of payment as follows:

(1) If the member dies and was eligible for unreduced retirement benefits and if the beneficiary is one person, the beneficiary may select:

(a) A lump sum payment of the member's account value; or

(b) A lifetime monthly annuity effective on the first of the month following the month of the member's death. The amount of the monthly annuity is equal to an amount that would have been paid to the beneficiary under a one hundred percent joint and survivor annuity. If the beneficiary dies before receiving the guaranteed member account value, any remaining balance must be paid in a lump sum to a named contingent beneficiary, or if none, to the estate of the recipient.

(2) If the member dies and was not eligible for unreduced retirement benefits and if the beneficiary is one person, the beneficiary may select:

(a) A lump sum payment of the member's account value; or

(b) A lifetime monthly annuity effective on the first of the month following the month of the member's death. The amount of the monthly annuity is equal to an amount that would have been paid to the beneficiary under a one hundred percent joint and survivor annuity without reduction for early retirement and using the disability option reduction factor. If the beneficiary dies before receiving the guaranteed member account value, any remaining balance must be paid in a lump sum to a named contingent beneficiary, or if none, to the estate of the recipient.

(3) If the member dies and multiple beneficiaries are eligible for death benefits, the plan shall pay the member's account value to the member's beneficiaries.

c. If a member or beneficiary receiving benefits under this plan dies before the total amount of benefits paid to either or both equals the amount of the member's account value, the difference must be paid in a lump sum to a named beneficiary, or if none, to the estate of the recipient.

SECTION 5. AMENDMENT. Section 15-39.1-20 of the North Dakota Century Code is amended and reenacted as follows:

15-39.1-20. Withdrawal from fund.

When a member of the fund ceases to be eligible under the terms of this chapter to participate in the fund, the member may, after a period of one hundred twenty days, withdraw from the fund and is then entitled to receive a refund of assessments accumulated with interest. The one-hundred-twenty-day requirement may be waived by the board when it has evidence the teacher will not be returning to teach in North Dakota. The refund is in lieu of any other benefits to which the member may be entitled under the terms of this chapter, and by accepting the refund, the member is waiving any right to participate in the fund under the same provisions that existed at the time the refund was accepted regardless of whether the member later repurchases refunded service credit. A member or a beneficiary of a member may elect, at the time and under rules adopted by the board, to have any portion of an eligible rollover distribution paid directly in a direct rollover to an eligible retirement plan specified by the member ~~as allowed under~~or the beneficiary to the extent permitted by section 401(a)(31) of the Internal Revenue Code in effect on August 1, ~~2009~~2011.