

HOUSE BILL No. 5112

October 2, 2001, Introduced by Reps. Lipsey, Adamini, Rich Brown, Kolb, Patterson, McConico, Howell, LaSata, Faunce, Dennis, Murphy, Bernero, Richner, Spade, Middaugh, Mead, Kuipers, Drolet, George, Schauer, Gosselin and Lemmons and referred to the Committee on Appropriations.

A bill to amend 1992 PA 234, entitled
"The judges retirement act of 1992,"
by amending sections 308, 506, and 720 (MCL 38.2308, 38.2506, and
38.2670), section 506 as amended by 1999 PA 215 and section 720
as added by 1996 PA 523.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 308. ~~-(1) The right of a person to a retirement allow-~~
2 ~~ance, to the return of accumulated contributions, to the retire-~~
3 ~~ment allowance itself, to an optional benefit, to any other right~~
4 ~~accrued or accruing to any member or beneficiary under this act,~~
5 ~~and to the money belonging to the retirement system is unassigna-~~
6 ~~ble and is not subject to execution, garnishment, attachment, the~~
7 ~~operation of bankruptcy or insolvency law, or any other process~~
8 ~~of law, except as otherwise provided in this act.~~

~~1 (2) The right of a member, vested former member, or a~~
~~2 retirant to a retirement allowance, to a deferred vested service~~
~~3 retirement allowance, to the return of accumulated contributions,~~
~~4 to the retirement allowance itself, to any optional benefit, or~~
~~5 to any other benefit under this act is subject to award by a~~
~~6 court pursuant to section 18 of chapter 84 of the Revised~~
~~7 Statutes of 1846, being section 552.18 of the Michigan Compiled~~
~~8 Laws, and to any other order of a court pertaining to alimony or~~
~~9 child support. The right of a member, vested former member, or a~~
~~10 retirant to a retirement allowance, to a deferred vested service~~
~~11 retirement allowance, to the return of accumulated contributions,~~
~~12 to the retirement allowance itself, to any optional benefit, or~~
~~13 to any other benefit under this act is subject to an eligible~~
~~14 domestic relations order under the eligible domestic relations~~
~~15 order act, Act No. 46 of the Public Acts of 1991, being~~
~~16 sections 38.1701 to 38.1711 of the Michigan Compiled Laws.~~

~~17 (3) If an award or order described in subsection (2)~~
~~18 requires the retirement system to withhold payment of a retire-~~
~~19 ment allowance, deferred vested service retirement allowance,~~
~~20 accumulated contributions, or other benefit from the person to~~
~~21 whom it is due or requires the retirement system to make payment~~
~~22 or requires the person to request that the retirement system make~~
~~23 payment of a retirement allowance, deferred vested service~~
~~24 retirement allowance, accumulated contributions, or other bene-~~
~~25 fit, for the purpose of meeting the person's obligations to a~~
~~26 spouse, former spouse, or child, as provided in subsection (2),~~
~~27 the withholding or payment provisions of the award or order is~~

~~1 effective only against those amounts as they become payable to
2 the person receiving a retirement allowance unless otherwise pro-
3 vided in an eligible domestic relations order under Act No. 46 of
4 the Public Acts of 1991. The limitation contained in this sub-
5 section does not apply to the accumulated contributions of a
6 person who has terminated employment and who is not a vested
7 former member.~~

8 (1) ~~-(4)-~~ The retirement system may offset retirement bene-
9 fits or refunds payable under this act against amounts owed to
10 the retirement system by a member, vested former member, retir-
11 ant, retirement allowance beneficiary, or refund beneficiary.

12 (2) ~~-(5)-~~ If the retirement system is required by the fed-
13 eral government pursuant to a court order to transmit a part of a
14 member's accumulated contributions to a federal agency, the serv-
15 ice credit that is covered by the payment shall be forfeited in
16 the same manner as if the employee had requested and been paid a
17 refund of the member's most recent contributions.

18 (3) THE RIGHT OF A PERSON TO A RETIREMENT ALLOWANCE, TO THE
19 RETURN OF ACCUMULATED CONTRIBUTIONS, TO AN OPTIONAL BENEFIT, TO
20 ANY OTHER RIGHT ACCRUED OR ACCRUING TO A MEMBER OR BENEFICIARY
21 UNDER THIS ACT, AND TO THE MONEY BELONGING TO THE RETIREMENT
22 SYSTEM IS SUBJECT TO THE PUBLIC EMPLOYEE RETIREMENT BENEFIT PRO-
23 TECTION ACT.

24 Sec. 506. (1) Upon application for retirement under this
25 act, a member or vested former member who meets the requirements
26 of section 501 may elect to receive a retirement allowance as a
27 straight life retirement allowance or as an optional retirement

1 allowance under 1 of the payment options provided in this
2 section. The member or vested former member shall file a written
3 election with the retirement system before the effective date of
4 the retirement allowance. If a member or vested former member
5 fails to file a written election under this subsection, the
6 member or vested former member is considered to have elected the
7 straight life retirement allowance under section 503. The member
8 or vested former member shall designate in the written election a
9 retirement allowance beneficiary that shall be either the spouse,
10 brother, sister, parent, or child, including an adopted child, of
11 the member or vested former member. The amount of retirement
12 allowance under options A and B are the actuarial equivalent of
13 the amount of the straight life retirement allowance calculated
14 under section 503. The options are as follows:

15 (a) Option A. The retirement system shall pay an optional
16 retirement allowance to the retirant for life with the provision
17 that upon the retirant's death, payment of the optional retire-
18 ment allowance is continued throughout the lifetime of the
19 retirement allowance beneficiary whom the member or vested former
20 member designated in writing and filed with the retirement system
21 at the time of election of the option.

22 (b) Option B. The retirement system shall pay an optional
23 retirement allowance for life to the retirant with the provision
24 that upon the retirant's death, payment of 1/2 of the optional
25 retirement allowance is continued throughout the lifetime of the
26 retirement allowance beneficiary whom the member or vested former

1 member designated in writing and filed with the retirement system
2 at the time of election of the option.

3 (2) Except as otherwise provided in this section, a retirant
4 shall not change the election of a payment option or the designa-
5 tion of a retirement allowance beneficiary under subsection (1)
6 after the retirement allowance effective date. If a retirant who
7 elected a payment option under subsection (1)(a) or (b) dies, the
8 retirement system shall pay the optional retirement allowance to
9 the option A beneficiary or option B beneficiary effective the
10 first day of the month following the retirant's death. If the
11 option A or option B beneficiary designated under this section is
12 the surviving spouse of the deceased retirant, the surviving
13 spouse may elect to receive a retirement allowance as provided in
14 section 508 in lieu of the survivor portion of the optional form
15 of payment elected by the retirant under this section.

16 (3) If the option A beneficiary or option B beneficiary pre-
17 deceases the retirant, the retirant's benefit reverts to a
18 straight life retirement allowance and the retirement system
19 shall begin payment of the straight life retirement allowance to
20 the retirant effective the first day of the month following the
21 option A or option B beneficiary's death.

22 (4) The retirement system shall provide each member or
23 vested former member who applies for retirement a written expla-
24 nation of the optional forms of payment under this section before
25 the member or vested former member retires.

26 (5) If a retirant receiving an optional retirement allowance
27 under this section is divorced from the spouse who had been

1 designated the option A or option B beneficiary, the retirement
2 system shall consider the election of the optional form of pay-
3 ment option under this section void if the judgment of divorce or
4 award or order of the court, or an amended judgment of divorce or
5 award or order of the court, described in ~~section 308~~ THE
6 PUBLIC EMPLOYEE RETIREMENT BENEFIT PROTECTION ACT and dated after
7 June 27, 1991 provides that the election of the optional form of
8 payment option under this section is to be considered void by the
9 retirement system and the retirant provides a certified copy of
10 the judgment of divorce or award or order of the court, or an
11 amended judgment of divorce or award or order of the court, to
12 the retirement system. If the election of an optional form of
13 payment under this section is considered void by the retirement
14 system under this subsection, the retirant's retirement allowance
15 shall revert to a straight life retirement allowance, including
16 postretirement adjustments, if any, subject to an award or order
17 of the court as described in ~~section 308~~ THE PUBLIC EMPLOYEE
18 RETIREMENT BENEFIT PROTECTION ACT. The retirement allowance
19 shall revert to a straight life retirement allowance under this
20 subsection effective the first of the month after the date the
21 retirement system receives a certified copy of the judgment of
22 divorce or award or order of the court. This subsection does not
23 supersede a judgment of divorce or award or order of the court in
24 effect on June 27, 1991. This subsection does not require the
25 retirement system to distribute or pay retirement assets on
26 behalf of a retirant in an amount that exceeds the actuarially

1 determined amount that would otherwise become payable if a
2 judgment of divorce had not been rendered.

3 (6) A member who continues active employment on or after the
4 date he or she acquires 8 years of credited service or who
5 becomes eligible for a retirement allowance as a vested former
6 member under section 501, whichever occurs first, may file a
7 written election with the retirement system to elect option A as
8 provided in subsection (1)(a). The member or vested former
9 member shall nominate a retirement allowance beneficiary in the
10 written election in the same manner as if the member or vested
11 former member were then retiring from service. If the
12 beneficiary's death or divorce from the member or vested former
13 member occurs before the effective date of the member's or vested
14 former member's retirement, the member's or vested former
15 member's election of option A and nomination of retirement allow-
16 ance beneficiary is automatically revoked and the member or
17 vested former member may again elect option A and nominate a
18 retirement allowance beneficiary at any time before the effective
19 date of retirement. If a member or vested former member who has
20 made an election and nominated a retirement allowance beneficiary
21 as provided in this subsection dies before the effective date of
22 his or her retirement, then the retirement allowance beneficiary
23 shall receive the retirement allowance that he or she would have
24 been entitled to receive under option A if the member or vested
25 former member had been retired on the date of the member's or
26 vested former member's death. Except as otherwise provided by
27 subsection (7), if a member or vested former member who has made

1 an election under this subsection subsequently retires under this
2 act, his or her election of option A takes effect at the time of
3 retirement. The member or vested former member, before the
4 effective date of retirement, but not after the effective date of
5 retirement, may revoke his or her previous election of option A
6 and elect to receive his or her retirement allowance as a
7 straight life retirement allowance or under option B as provided
8 for in subsection (1). This subsection does not apply on and
9 after the date the settlement agreement in the case of Michigan
10 judges assn v Treasurer of the State of Michigan, case
11 no. 98-DT-72771-CV (Ed Mi), becomes of no further force or
12 effect, is rendered null and void, or is otherwise terminated.

13 (7) If a member, vested former member, retiring member, or
14 retiring vested former member is married on the effective date of
15 the retirement allowance, an election under this section, other
16 than an election of a payment option under subsection (1) naming
17 the spouse as retirement allowance beneficiary, shall not be
18 effective unless the election is signed by the spouse. However,
19 this requirement may be waived by the retirement board if the
20 signature of a spouse cannot be obtained because of extenuating
21 circumstances. As used in this subsection, "spouse" means the
22 person to whom the member, vested former member, retiring member,
23 or retiring vested former member is married on the effective date
24 of the retirement allowance.

25 Sec. 720. (1) Distributions from employer contributions
26 made pursuant to section 714(2) and (3) and earnings on those
27 employer contributions, and distributions from employee

1 contributions made pursuant to section 714(3) and earnings on
2 those employee contributions, are exempt from any state, county,
3 municipal, or other local tax. ~~—, and shall not be subject to~~
4 ~~execution, garnishment, attachment, the operation of bankruptcy~~
5 ~~or insolvency laws, or other process of law, and shall be unas-~~
6 ~~signable except as otherwise provided in this act.~~

7 ~~(2) The right of a qualified participant or a former quali-~~
8 ~~fied participant, or his or her beneficiaries, to a distribution~~
9 ~~described in subsection (1) is subject to forfeiture pursuant to~~
10 ~~the public employee retirement benefits forfeiture act, Act~~
11 ~~No. 350 of the Public Acts of 1994, being sections 38.2701 to~~
12 ~~38.2705 of the Michigan Compiled Laws.~~

13 ~~(3) The right of a qualified participant or former qualified~~
14 ~~participant to a distribution described in subsection (1) is~~
15 ~~subject to an award by a court pursuant to section 18 of chapter~~
16 ~~84 of the Revised Statutes of 1846, being section 552.18 of the~~
17 ~~Michigan Compiled Laws; an eligible domestic relations order~~
18 ~~under the eligible domestic relations order act, Act No. 46 of~~
19 ~~the Public Acts of 1991, being sections 38.1701 to 38.1711 of the~~
20 ~~Michigan Compiled Laws; and to any other domestic relations order~~
21 ~~of a court pertaining to alimony or child support.~~

22 ~~(4) If an award or order described in subsection (3)~~
23 ~~requires Tier 2 to withhold payment of a distribution described~~
24 ~~in subsection (1) or requires Tier 2 to make payment or requires~~
25 ~~the individual to request that Tier 2 make payment of a distribu-~~
26 ~~tion described in subsection (1), for the purpose of meeting the~~
27 ~~individual's obligations to a spouse, former spouse, or child, as~~

~~1 provided in subsection (3), the withholding or payment provisions
2 of the award or order are effective only against such amounts as
3 they become due and payable to the individual receiving the dis-
4 tribution, unless otherwise provided in an eligible domestic
5 relations order under the eligible domestic relations order act,
6 Act No. 46 of the Public Acts of 1991. The limitation contained
7 in this subsection does not apply to the accumulated employee
8 contributions of a former qualified participant who has termi-
9 nated employment before acquiring a vested status in Tier 2 pur-
10 suant to this act.~~

11 (2) ~~-(5)-~~ The state treasurer has the right of setoff to
12 recover overpayments made under this act and to satisfy any
13 claims arising from embezzlement or fraud committed by a quali-
14 fied participant, former qualified participant, refund beneficia-
15 ry, or other person who has a claim to a distribution or any
16 other benefit from Tier 2.

17 (3) ~~-(6)-~~ The state treasurer shall correct errors in the
18 records and actions in Tier 2 under this act, and shall seek to
19 recover overpayments and shall make up underpayments.

20 Enacting section 1. This amendatory act does not take
21 effect unless Senate Bill No. _____ or House Bill No. 5108
22 (request no. 02139'01 **) of the 91st Legislature is enacted into
23 law.