

**THE JUDGES RETIREMENT ACT OF 1992 (EXCERPT)**  
**Act 234 of 1992**  
Article VII

**38.2651 Participation in Tier 1 or Tier 2 by member, vested former member, or former nonvested member; election; writing; irrevocability; method; election subject to domestic relations order act; disqualification for tax purposes; election not implemented due to court order.**

Sec. 701.

(1) The retirement system shall provide an opportunity for each member who is a member on March 30, 1997, to elect in writing to terminate membership in Tier 1 and elect to become a qualified participant in Tier 2. An election made by a member under this subsection is irrevocable if the election has taken effect and a transfer has occurred under section 702. The retirement system shall accept written elections under this subsection from members during the period beginning on January 2, 1998 and ending on May 31, 1998. A member who does not make a written election or who does not file the election during the period specified in this subsection continues to be a member of Tier 1. A member who makes and files a written election under this subsection elects to do all of the following:

(a) Cease to be a member of Tier 1 effective 12 midnight June 30, 1998.

(b) Become a qualified participant in Tier 2 effective 12:01 a.m., July 1, 1998.

(c) Except as otherwise provided in this subdivision, waive all of his or her rights to a pension, an annuity, a retirement allowance, an insurance benefit, or any other benefit under Tier 1 effective 12 midnight June 30, 1998. This subdivision does not affect a person's right to health benefits provided under this act pursuant to section 719.

(2) If an individual who was a vested former member on March 30, 1997, or an individual who was a former nonvested member on March 30, 1997 becomes a judge or state official and is again eligible for membership in Tier 1, the individual shall elect in writing to remain a member of Tier 1 or to terminate membership in Tier 1 and become a qualified participant in Tier 2. An election made by a vested former member or a former nonvested member under this subsection is irrevocable. The retirement system shall accept written elections under this subsection from a vested former member or a former nonvested member during the period beginning on the date of the individual's eligibility for membership and ending upon the expiration of 60 days after the date of that eligibility. A vested former member or former nonvested member who makes and files a written election to remain a member of Tier 1 retains all rights and is subject to all conditions as a member of Tier 1 under this act. A vested former member or former nonvested member who does not make a written election or who does not file the election during the period specified in this subsection continues to be a member of Tier 1. Subject to section 701b, a vested former member or former nonvested member who makes and files a written election to terminate membership in Tier 1 elects to do all of the following:

(a) Cease to be a member of Tier 1 effective 12 midnight on the last day of the payroll period that includes the date of the election.

(b) Become a qualified participant in Tier 2 effective 12:01 a.m. on the first day of the payroll period immediately following the date of the election.

(c) Except as otherwise provided in this subdivision, waive all of his or her rights to a pension, an annuity, a retirement allowance, an insurance benefit, or any other benefit under Tier 1 effective 12 midnight on the last day of the payroll period that includes the date of the election. This subdivision does not affect an individual's right to health benefits provided under this act pursuant to section 719.

(d) Waive the calculation of any actuarial present value based upon any salary increases that occur after December 31, 1998.

(3) After consultation with the retirement system's actuary and the retirement board, the department of management and budget shall determine the method by which a member, vested former member, or former nonvested member shall make a written election under this section. If the member, vested former member, or former nonvested member is married at the time of the election, the election is not effective unless the election is signed by the individual's spouse. However, the retirement board may waive this requirement if the spouse's signature cannot be obtained because of extenuating circumstances.

(4) An election under this section is subject to the eligible domestic relations order act, 1991 PA 46, MCL 38.1701 to 38.1711.

(5) If the department of management and budget receives notification from the United States internal revenue service that this section or any portion of this section will cause the retirement system to be disqualified for tax purposes under the internal revenue code, then the portion that will cause the disqualification does not apply.

(6) A judge of the circuit court, probate court, or district court who was a member on March 30, 1997 and who either made an election under this section but was not able to have the election implemented due to the restraining order entered in Michigan judges assn v Treasurer of the state of Michigan, case No. 98-DT-72771-CV (Ed Mi)

and has retired on or after June 30, 1998 and before the opening of the election window described in section 701a(2), or who retired before June 30, 1998 may make an election in the manner and under the conditions prescribed in the stipulated order regarding temporary restraining order in Michigan judges assn v Treasurer of the state of Michigan, case no. 98-DT-72771-CV (Ed Mi), entered on February 18, 1999. Notwithstanding any other provision of this section to the contrary, the department and the Tier 2 plan administrator shall determine the method by which this subsection is implemented.

(7) A judge of the circuit court, probate court, or district court who was a member on March 30, 1997 and who made an election under this section but was not able to have the election implemented due to the restraining order entered in Michigan judges assn v Treasurer of the state of Michigan, case No. 98-DT-72771-CV (Ed Mi) shall be considered to have made the election under section 701a to terminate membership in Tier 1 and become a qualified participant in Tier 2. The method of implementing this subsection and any disputes regarding this implementation shall be resolved by the plan administrator.

**History:** Add. 1996, Act 523, Eff. Mar. 31, 1997 ;-- Am. 1998, Act 66, Imd. Eff. Apr. 30, 1998 ;-- Am. 1999, Act 215, Eff. May 30, 2000

\*\*\*\*\* 38.2651a THIS SECTION IS REPEALED BY ACT 215 OF 1999 EFFECTIVE ON THE DATE THE SETTLEMENT AGREEMENT IN THE CASE OF MICHIGAN JUDGES ASSN V TREASURER OF THE STATE OF MICHIGAN, CASE NO. 98-DT-72771-CV (ED MI), BECOMES OF NO FURTHER FORCE AND EFFECT, IS RENDERED NULL AND VOID, OR IS OTHERWISE TERMINATED \*\*\*\*\*

### **38.2651a Participation of judge of circuit court, probate court, or district court in Tier 1 or Tier 2; election; window of opportunity; method; disqualification for tax purposes.**

Sec. 701a.

(1) Except as otherwise provided in subsection (3), the retirement system shall provide an opportunity for each judge of the circuit court, probate court, or district court who was a member on March 30, 1997 to elect in writing to terminate membership in Tier 1 and elect to become a qualified participant in Tier 2. This section does not apply to an individual who was a member on March 30, 1997 and whose election to terminate membership in Tier 1 and become a qualified participant in Tier 2 under section 701 has already taken effect and the transfer has occurred. An election made by a member under this subsection is irrevocable. The retirement system shall accept written elections under this subsection from members during the period prescribed by the Tier 2 plan administrator under subsection (2). A member who does not make a written election or who does not file the election during the period specified in subsection (2) continues to be a member of Tier 1. Subject to section 701b, a member who makes and files a written election under this subsection elects to do all of the following:

(a) Cease to be a member of Tier 1 effective 12 midnight June 30, 1998.

(b) Become a qualified participant in Tier 2 effective 12:01 a.m., July 1, 1998.

(c) Except as otherwise provided in this subdivision, waive all of his or her rights to a pension, an annuity, a retirement allowance, an insurance benefit, or any other benefit under Tier 1 effective 12 midnight on June 30, 1998. This subdivision does not affect a person's right to health benefits provided under this act pursuant to section 719.

(d) Waive the calculation of any actuarial present value based upon any salary increases that occur after December 31, 1998.

(2) The Tier 2 plan administrator shall establish a 60-day window for the members described in subsections (1) and (3) to make the election described in subsection (1) or (3). The Tier 2 plan administrator shall establish the 60-day window as soon as possible after confirmation from the office of retirement services that all necessary notifications and calculations of actuarial present values have been made, but not later than June 1, 2000.

(3) This subsection applies to a judge of the circuit court, probate court, or district court who was a vested member of Tier 1 on March 30, 1997 and who terminates the employment upon which that membership is based after March 30, 1997 but before the opening day of the 60-day window described in subsection (2). An individual described in this subsection may elect in writing to terminate membership in Tier 1 and elect to receive a distribution from Tier 1. An election made by a member under this subsection is irrevocable. The retirement system shall accept written elections under this subsection from a member during the 60-day window period. A member described in this subsection who does not make a written election or who does not file the election during the period specified in subsection (2) continues to be a member or vested former member of Tier 1. A member who makes and files a written election under this subsection to terminate membership in Tier 1 elects to do all of the following:

(a) Cease to be a member of Tier 1 effective 12 midnight on the day immediately preceding the date of the termination of employment.

(b) Except as otherwise provided in this subdivision, waive all of his or her rights to a pension, an annuity, a retirement allowance, an insurance benefit, or any other benefit under Tier 1 effective 12 midnight on the date described in subdivision (a). This subdivision does not affect an individual's right to health benefits provided under this act pursuant to section 509.

(c) Waive the calculation of any actuarial present value based upon any salary increases that occur after December 31, 1998.

(4) After consultation with the retirement system's actuary and the retirement board, the department of management and budget shall determine the method by which a member, vested former member, or former nonvested member shall make a written election under this section. If the member, vested former member, or former nonvested member is married at the time of the election, the election is not effective unless the election is signed by the individual's spouse. However, the retirement board may waive this requirement if the spouse's signature cannot be obtained because of extenuating circumstances.

(5) An election under this section is subject to the eligible domestic relations order act, 1991 PA 46, MCL 38.1701 to 38.1711.

(6) If the department of management and budget receives notification from the United States internal revenue service that this section or any portion of this section will cause the retirement system to be disqualified for tax purposes under the internal revenue code, then the portion that will cause the disqualification does not apply.

**History:** Add. 1999, Act 215, Eff. May 30, 2000

\*\*\*\*\* 38.2651b THIS SECTION IS REPEALED BY ACT 215 OF 1999 EFFECTIVE ON THE DATE THE SETTLEMENT AGREEMENT IN THE CASE OF MICHIGAN JUDGES ASSN V TREASURER OF THE STATE OF MICHIGAN, CASE NO. 98-DT-72771-CV (ED MI), BECOMES OF NO FURTHER FORCE AND EFFECT, IS RENDERED NULL AND VOID, OR IS OTHERWISE TERMINATED \*\*\*\*\*

### **38.2651b Election pursuant to MCL 38.2651 or MCL 38.2651a.**

Sec. 701b.

(1) A member who makes and files a written election under section 701a(1) or an individual who makes and files a written election under section 701(2) shall at the time of that election also make an election to do 1 of the following:

(a) To have 100% of his or her salary that is paid both directly and indirectly by this state for the position he or she holds be considered his or her salary in Tier 2.

(b) To have the portion of his or her salary that is considered compensation under Tier 1 on the day before his or her election continue to be the portion that is considered his or her salary in Tier 2.

(2) A member or individual who does not make the election described in subsection (1) at the time he or she makes the election under section 701a(1) or 701(2) is considered to have made the election described in subsection (1)(b). An election made by a member or individual under this section is irrevocable.

(3) Upon the request of a member, a reporting unit shall disclose to the member the effect an election under this section, if made, will have on the member's right as a retiree to health care benefits from that reporting unit.

(4) This section shall not apply until the department of management and budget receives notification from the United States internal revenue service that the salary election under this section is acceptable.

**History:** Add. 1999, Act 215, Eff. May 30, 2000

### **38.2652 Termination of membership; transfer, recomputation, and calculation by retirement system.**

Sec. 702.

(1) For a member who elects to terminate membership in Tier 1 under section 701(1), the retirement system shall

direct the state treasurer to transfer a lump sum amount from the appropriate fund created under this act to the qualified participant's account in Tier 2 on or before October 31, 1998. The retirement system shall calculate the amount to be transferred, which shall be equal to the sum of the following:

(a) The member's accumulated contributions, if any, from the reserve for member contributions as of 12 midnight June 30, 1998.

(b) For a member who is vested under section 501(1) as of 12 midnight on June 30, 1998, the excess, if any, of the actuarial present value of the member's accumulated benefit obligation, over the amount specified in subdivision (a), from the reserve for employer contributions. Except as provided in subsection (5), for the purposes of this subsection, the present value of the member's accumulated benefit obligation is based upon the member's estimated credited service and estimated final salary as of 12 midnight on June 30, 1998. The actuarial present value shall be computed as of 12 midnight June 30, 1998 and shall be based on the following:

(i) Eight percent effective annual interest, compounded annually.

(ii) A 50% male and 50% female gender neutral blend of the mortality tables used to project retiree longevity in the most recent actuarial valuation report.

(iii) A benefit commencement age, based upon the member's estimated credited service as of 12 midnight June 30, 1998. The benefit commencement age shall be the younger of the following, but shall not be younger than the member's age as of 12 midnight June 30, 1998:

(A) Age 60.

(B) Age 55, if the member's estimated credited service equals or exceeds 18 years.

(C) The member's age, if the member's estimated credited service equals or exceeds 25 years.

(c) Interest on any amounts determined in subdivisions (a) and (b), from July 1, 1998 to the date of the transfer, based upon 8% annual interest, compounded annually.

(2) For each member who elects to terminate membership in the retirement system under section 701(1), the retirement system shall recompute the amount transferred under subsection (1) not later than December 31, 1998 based upon the member's actual credited service and actual final salary as of 12 midnight June 30, 1998. If the recomputed amount differs from the amount transferred under subsection (1) by \$10.00 or more, not later than January 15, 1999, the retirement system shall do all of the following:

(a) Direct the state treasurer to transfer from the reserve for employer contributions to the qualified participant's account in Tier 2 the excess, if any, of the recomputed amount over the previously transferred amount together with interest from 12 midnight June 30, 1998 to the date of the transfer under this subsection, based upon 8% effective annual interest, compounded annually.

(b) Direct the state treasurer to transfer from the qualified participant's account in Tier 2 to the reserve for employer contributions the excess, if any, of the previously transferred amount over the recomputed amount, together with interest, from the date of the transfer made under subsection (1), based upon 8% effective annual interest, compounded annually.

(3) For a vested former member who elects to terminate membership in this retirement system under section 701(2), the retirement system shall direct the state treasurer to transfer a lump sum amount from the appropriate fund created under this act to the qualified participant's account in Tier 2 on or before the expiration of 60 days after the date of the individual's termination of employment. The retirement system shall calculate the amount to be transferred, which shall be equal to the sum of the following:

(a) The vested former member's accumulated contributions, if any, from the reserve for member contributions as of 12 midnight on the last day of the payroll period that includes the date of the election.

(b) The excess, if any, of the actuarial present value of the vested former member's accumulated benefit obligation, over the amount specified in subdivision (a), from the reserve for employer contributions. Except as provided in subsection (5), for the purposes of this subsection, the present value of the vested former member's accumulated benefit obligation is based upon the vested former member's estimated credited service and estimated final salary as of 12 midnight on the last day of the payroll period that includes the date of the election. The actuarial present value shall be computed as of 12 midnight on that date and shall be based on the following:

(i) Eight percent effective annual interest, compounded annually.

(ii) A 50% male and 50% female gender neutral blend of the mortality tables used to project retiree longevity in the most recent annual actuarial valuation report.

(iii) A benefit commencement age, based upon the member's estimated credited service as of 12 midnight on the last day of the payroll period that includes the date of the election. The benefit commencement age shall be the younger of the following, but shall not be younger than the member's age as of 12 midnight on the last day of the payroll period that includes the date of the election:

(A) Age 60.

(B) Age 55, if the vested former member's estimated credited service equals or exceeds 18 years.

(C) The vested former member's age, if the vested former member's estimated credited service equals or exceeds 25 years.

(c) Interest on any amounts determined in subdivisions (a) and (b), from the first day of the payroll period immediately following the date of the election to the date of the transfer, based upon 8% effective annual interest,

compounded annually.

(4) For each vested former member who elects to terminate membership in Tier 1 under section 701(2), the retirement system shall recompute the amount transferred under subsection (3) not later than the expiration of 90 days after the transfer occurs under subsection (3) based upon the vested former member's actual credited service and actual final salary as of 12 midnight on the last day of the payroll period that includes the date of the election. If the recomputed amount differs from the amount transferred under subsection (3) by \$10.00 or more, the retirement system shall do all of the following:

(a) Direct the state treasurer to transfer from the reserve for employer contributions to the qualified participant's account in Tier 2 the excess, if any, of the recomputed amount over the previously transferred amount together with interest from 12 midnight on the last day of the payroll period that includes the date of the election to the date of the transfer under this subsection, based upon 8% effective annual interest, compounded annually.

(b) Direct the state treasurer to transfer from the qualified participant's account in Tier 2 to the reserve for employer contributions the excess, if any, of the previously transferred amount over the recomputed amount, together with interest, from the date of the transfer made under subsection (3), based upon 8% effective annual interest, compounded annually.

(5) For the purposes of subsections (1) to (4), the calculation of estimated and actual present value of the member's or vested former member's accumulated benefit obligation shall be based upon methods adopted by the department of management and budget and the retirement system's actuary in consultation with the retirement board. The retirement system shall utilize the same actuarial valuation report used to calculate the amount transferred under subsection (1) or (3) when making the recomputation required under subsection (2) or (4). Estimated and actual final salary shall be determined as provided in section 105(4) as of 12 midnight on the date the member or deferred member ceases to be a member of Tier 1 under section 701.

(6) For a former nonvested member who elects to terminate membership in Tier 1 under section 701(2) and who has accumulated contributions standing to his or her credit in the reserve for member contributions, the retirement system shall direct the state treasurer to transfer a lump sum amount from the reserve for member contributions created under section 210 to the qualified participant's account in Tier 2 on or before the expiration of 60 days after the date of the individual's election to terminate membership. The retirement system shall calculate the amount to be transferred, which shall be equal to the sum of the following:

(a) The former nonvested member's accumulated contributions, if any, from the reserve for member contributions as of 12 midnight on the last day of the payroll period that includes the date of the election.

(b) Interest on any amounts determined in subdivision (a), from the first day of the payroll period immediately following the date of the election to the date of the transfer, based upon 8% effective annual interest, compounded annually.

(7) If the department of management and budget receives notification from the United States internal revenue service that this section or any portion of this section will cause the retirement system to be disqualified for tax purposes under the internal revenue code, then the portion that will cause the disqualification does not apply.

**History:** Add. 1996, Act 523, Eff. Mar. 31, 1997 ;-- Am. 1998, Act 66, Imd. Eff. Apr. 30, 1998

\*\*\*\*\* 38.2652a THIS SECTION IS REPEALED BY ACT 215 OF 1999 EFFECTIVE ON THE DATE THE SETTLEMENT AGREEMENT IN THE CASE OF MICHIGAN JUDGES ASSN V TREASURER OF THE STATE OF MICHIGAN, CASE NO. 98-DT-72771-CV (ED MI), BECOMES OF NO FURTHER FORCE AND EFFECT, IS RENDERED NULL AND VOID, OR IS OTHERWISE TERMINATED \*\*\*\*\*

**38.2652a Termination of membership in Tier 1 pursuant to MCL 38.2651a; definitions; transfer to account in Tier 2; calculation; disqualification for tax purposes.**

Sec. 702a.

(1) For a member who elects to terminate membership in Tier 1 under section 701a(1), the retirement system shall direct the state treasurer to transfer a lump sum amount from the appropriate fund created under this act to the qualified participant's account in Tier 2 on or before the expiration of 5 months after the window prescribed in section 701a(2) is closed. The retirement system shall calculate the amount to be transferred, which shall be equal to the sum of the following:

(a) The member's accumulated contributions, if any, from the reserve for member contributions.

(b) For a member who is vested under section 501(1) as of 12 midnight on the termination date, the excess, if any, of the actuarial present value of the member's accumulated benefit obligation, over the amount specified in

subdivision (a), from the reserve for employer contributions. Except as provided in subsection (4), for the purposes of this subsection the present value of the member's accumulated benefit obligation is based upon the member's actual credited service and actual final salary as of 12 midnight on the termination date. The actuarial present value shall be computed as of 12 midnight on the termination date and shall be based on the following:

(i) Eight percent effective annual interest, compounded annually.

(ii) A 50% male and 50% female gender neutral blend of the mortality tables used to project retirant longevity in the most recent actuarial valuation report.

(iii) A benefit commencement age, based upon the member's credited service as of 12 midnight on the termination date. The benefit commencement age shall be the younger of the following, but shall not be younger than the member's age as of 12 midnight on the termination date:

(A) Age 60.

(B) Age 55, if the member's credited service equals or exceeds 18 years.

(C) The member's age, if the member's credited service equals or exceeds 25 years.

(c) Interest on any amounts determined in subdivisions (a) and (b), from the participation date to the date of the transfer, based upon 8% annual interest, compounded annually.

(2) As used in this section:

(a) "Participation date" means the date the individual becomes a qualified participant in Tier 2 as determined under section 701a(1)(b).

(b) "Termination date" means the date the individual ceases to be a member of Tier 1 as specified under section 701a(1)(a).

(3) For a member who elects to terminate membership in this retirement system under section 701a(3), the retirement system shall direct the state treasurer to transfer a lump sum amount from the appropriate fund created under this act to the former qualified participant's account in Tier 2 on or before the date prescribed in subsection (1) for transfers under that subsection. The retirement system shall calculate the amount to be transferred, which shall be equal to the sum of the following:

(a) The member's accumulated contributions, if any, from the reserve for member contributions as of 12 midnight on the day immediately preceding the date of the termination of employment.

(b) The excess, if any, of the actuarial present value of the member's accumulated benefit obligation, over the amount specified in subdivision (a), from the reserve for employer contributions. Except as provided in subsection (4), for the purposes of this subsection the present value of the member's accumulated benefit obligation is based upon the member's actual credited service and actual final salary as of 12 midnight on the day immediately preceding the date of the termination of employment. The actuarial present value shall be computed as of 12 midnight on that date and shall be based on the following:

(i) Eight percent effective annual interest, compounded annually.

(ii) A 50% male and 50% female gender neutral blend of the mortality tables used to project retirant longevity in the most recent annual actuarial valuation report.

(iii) A benefit commencement age, based upon the member's estimated credited service as of 12 midnight on the day immediately preceding the date of the termination of employment. The benefit commencement age shall be the younger of the following, but shall not be younger than the member's age as of 12 midnight on the day immediately preceding the date of the termination of employment:

(A) Age 60.

(B) Age 55, if the member's credited service equals or exceeds 18 years.

(C) The age of the member if the member's credited service equals or exceeds 25 years.

(c) Interest on any amounts determined in subdivisions (a) and (b), from the day immediately following the date described in subdivision (a) to the date of the transfer, based upon 8% effective annual interest, compounded annually.

(4) For the purposes of subsections (1) and (3), the calculation of actual present value of the member's or vested former member's accumulated benefit obligation shall be based upon methods adopted by the department and the retirement system's actuary in consultation with the retirement board, and actual final salary shall be determined as provided in section 105(4), as of 12 midnight on the date the member ceases to be a member of Tier 1 under section 701a.

(5) If the department of management and budget receives notification from the United States internal revenue service that this section or any portion of this section will cause the retirement system to be disqualified for tax purposes under the internal revenue code, then the portion that will cause the disqualification does not apply.

**History:** Add. 1999, Act 215, Eff. May 30, 2000

### **38.2653 Calculation and submission of cost savings.**

Sec. 703.

After consulting the retirement system's actuary, the department of management and budget shall calculate for each fiscal year any cost savings that have accrued to this state as a result of the implementation of the amendatory act that added this section over the costs that would have been incurred by this state to fund this retirement system had the amendatory act that added this section not been implemented. The total amount of such cost savings shall be submitted in the executive budget to the legislature for appropriation in the next succeeding state fiscal year to the reserve for health benefits created by section 214. Any amount appropriated pursuant to this section and accumulated earnings on those amounts shall not be expended until the actuarial accrued liability for health benefits under section 509 is 100% funded.

**History:** Add. 1996, Act 523, Eff. Mar. 31, 1997

### **38.2654 Meanings of words and phrases; "accumulated balance" defined.**

Sec. 704.

(1) For the purposes of this article, the words and phrases defined in this section and sections 705 to 710 have the meanings ascribed to them in those sections.

(2) "Accumulated balance" means the total balance in a qualified participant's, former qualified participant's, or refund beneficiary's individual account in Tier 2.

**History:** Add. 1996, Act 523, Eff. Mar. 31, 1997

### **38.2655 "Employer," "former qualified participant," and "health benefit dependent" defined.**

Sec. 705.

(1) "Employer" means this state.

(2) "Former qualified participant" means an individual who was a qualified participant and who terminates the employment upon which his or her participation is based for any reason.

(3) "Health benefit dependent" means the qualified or former qualified participant's spouse, if any, and an unmarried child who is considered a dependent of the qualified or former qualified participant under section 152 of the internal revenue code, if any.

**History:** Add. 1996, Act 523, Eff. Mar. 31, 1997 ;-- Am. 1999, Act 215, Eff. May 30, 2000

### **38.2656 "Qualified participant," "refund beneficiary," "salary," and "state treasurer" defined.**

Sec. 706.

(1) "Qualified participant" means an individual who is a participant of Tier 2 and who meets 1 of the following requirements:

(a) An individual who first becomes a judge or state official on or after March 31, 1997, and who before March 31, 1997 would have been eligible to be a member of Tier 1.

(b) An individual who elects to terminate membership in Tier 1 and who elects to participate in Tier 2 in the manner prescribed in section 701 or 701a.

(2) "Refund beneficiary" means an individual nominated by a qualified participant or a former qualified participant under section 717 to receive a distribution of the participant's accumulated balance in the manner prescribed in section 718.

(3) "Salary" means 1 of the following:

(a) For an individual described in subsection (1)(a), 100% of his or her salary that is paid both directly and indirectly by this state for the position he or she holds.

(b) For an individual described in subsection (1)(b), the salary that he or she elects or is considered to have elected under section 701b.

(4) "State treasurer" means the treasurer of this state.

**History:** Add. 1996, Act 523, Eff. Mar. 31, 1997 ;-- Am. 1999, Act 215, Eff. May 30, 2000

### **38.2657 Administration of Tier 2 by state treasurer.**

Sec. 707.

(1) The state treasurer shall administer Tier 2 and shall invest the assets of Tier 2. The state treasurer is the fiduciary and trustee of Tier 2. The state treasurer may appoint an advisory board to assist the state treasurer in carrying out his or her duties as fiduciary and trustee.

(2) The state treasurer shall determine the provisions and procedures of Tier 2 in conformity with this act and the internal revenue code.

(3) The state treasurer has the exclusive authority and responsibility to employ or contract with personnel and for services that the state treasurer determines necessary for the proper administration of and investment of assets of Tier 2, including but not limited to managerial, professional, legal, clerical, technical, and administrative personnel or services.

**History:** Add. 1996, Act 523, Eff. Mar. 31, 1997

### **38.2658 Hearing.**

Sec. 708.

(1) A qualified participant, former qualified participant, health benefit dependent, or refund beneficiary may request a hearing on a claim involving his or her rights under Tier 2. Upon written request, the state treasurer shall provide for a hearing that shall be conducted pursuant to chapter 4 of the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.271 to 24.287 of the Michigan Compiled Laws. An individual may be represented by counsel or other duly authorized agent at a hearing conducted under this section.

(2) Chapters 2, 3, and 5 of Act No. 306 of the Public Acts of 1969, being sections 24.221 to 24.264 and 24.291 to 24.292 of the Michigan Compiled Laws, do not apply to the establishment, implementation, administration, operation, investment, or distribution of Tier 2.

**History:** Add. 1996, Act 523, Eff. Mar. 31, 1997

### **38.2659 Direction of investment by qualified participant, former qualified participant, and refund beneficiary.**

Sec. 709.

Each qualified participant, former qualified participant, and refund beneficiary shall direct the investment of the individual's accumulated employer and employee contributions and earnings to 1 or more investment choices within



available categories of investment provided by the state treasurer. The limitations on the percentage of total assets for investments provided in Act No. 314 of the Public Acts of 1965, being sections 38.1132 to 38.1140i of the Michigan Compiled Laws, do not apply to Tier 2.

**History:** Add. 1996, Act 523, Eff. Mar. 31, 1997

### **38.2660 Administrative expenses.**

Sec. 710.

The administrative expenses of Tier 2 shall be paid by the qualified participants, former qualified participants, and refund beneficiaries who have not closed their accounts in a manner determined by the state treasurer.

**History:** Add. 1996, Act 523, Eff. Mar. 31, 1997

### **38.2661 Participation in other retirement benefits plan; prohibition.**

Sec. 711.

(1) A qualified participant shall not participate in any other public sector retirement benefits plan for simultaneous service rendered to the same public sector employer. This subsection does not apply to a qualified participant who makes the election under section 701b(1)(b) for that portion of his or her compensation that is not considered salary for the purposes of Tier 2. Except as otherwise provided in this act, this section does not do any of the following:

(a) Prohibit a qualified participant from participating in a retirement plan established under the internal revenue code by this state or other public sector employer.

(b) Impair any vested right to a retirement benefit, based upon service as a judge, accrued under such a plan as of the day before he or she becomes a qualified participant in Tier 2.

(c) Impair a qualified participant's right to receive health care benefits or other insurance benefits from a reporting unit.

(2) A qualified participant consents as a condition of participation in Tier 2 that he or she shall not receive a retirement allowance or other benefit from any other public sector retirement benefits plan while holding the position that qualifies him or her for participation in Tier 2 and the other plan. A qualified participant who receives a retirement allowance in violation of this subsection forfeits his or her right to employer contributions under section 714. The employer of a qualified participant who violates this subsection shall immediately suspend employer contributions under section 714. A qualified participant who is a contributing member in a local public sector retirement benefits plan on the day before he or she becomes a qualified participant in Tier 2 and who does not have a vested right to a retirement benefit under that plan on that date may withdraw the contributions made by that participant to the local plan without violating this subsection. This subsection does not apply to a former qualified participant.

(3) Within 30 days after the request of a qualified participant, a reporting unit shall disclose to the qualified participant the effect this section or an election under section 701 or 701a, if made, will have on the member's right to health care benefits as a retirant or a vested right to a retirement benefit for service as a judge provided by that plan.

**History:** Add. 1996, Act 523, Eff. Mar. 31, 1997 ;-- Am. 1999, Act 215, Eff. May 30, 2000

### **38.2662 Judge or state official; election not to participate or to discontinue participation in Tier 2.**

Sec. 712.

An individual who first becomes a judge or state official on or after March 31, 1997 may irrevocably elect not to become a qualified participant of Tier 2 or may irrevocably elect to discontinue participation in Tier 2 by filing written notice of the election with the state treasurer. Upon receipt of the election, his or her employer shall not contribute any percentage of salary under section 714 for the individual who makes either election.

**History:** Add. 1996, Act 523, Eff. Mar. 31, 1997

### **38.2663 Election to terminate membership in Tier 1; credit or charge to Tier 2 account.**

Sec. 713.

(1) The state treasurer shall promptly credit the Tier 2 account of a qualified participant who makes an election under section 701 or 701a to terminate membership in Tier 1 with any amount transferred from Tier 1 pursuant to section 702 or 702a, as applicable.

(2) Not later than 30 days after receipt of a recomputed amount under section 702(2) or (4), the state treasurer shall charge the qualified participant's Tier 2 account for any amount of excess transfers under section 702(1) or (3) and transfer that amount to the appropriate fund in Tier 1. The state treasurer may determine which investment choice or choices within a qualified participant's Tier 2 account will be used for this purpose.

**History:** Add. 1996, Act 523, Eff. Mar. 31, 1997 ;-- Am. 1999, Act 215, Eff. May 30, 2000

### **38.2664 Contributions by employer and participant.**

Sec. 714.

(1) This section is subject to the vesting requirements of section 715.

(2) A qualified participant's employer shall contribute to the qualified participant's account in Tier 2 an amount equal to 4% of the qualified participant's salary.

(3) Except as otherwise provided in this subsection, a qualified participant may periodically elect to contribute up to 3% of his or her salary to his or her Tier 2 account. Beginning April 10, 2025, a qualified participant may periodically elect to contribute up to 5% of his or her salary to his or her Tier 2 account. The qualified participant's employer shall make an additional contribution to the qualified participant's Tier 2 account in an amount equal to the contribution made by the qualified participant under this subsection.

(4) A qualified participant may make contributions in addition to contributions made under subsection (3) to the qualified participant's Tier 2 account as permitted by the state treasurer and the internal revenue code. The qualified participant's employer shall not match contributions made by the qualified participant under this subsection.

(5) A qualified participant who makes a written election under section 701a may elect to contribute up to 6% of his or her salary to his or her Tier 2 account. In lieu of employer contributions under subsection (3), the qualified participant's employer shall make an additional contribution to the qualified participant's Tier 2 account in an amount equal to the contribution made by the qualified participant under this subsection. This subsection applies for a period as determined by the department that equals the time in which a Tier 1 member was not able to make contributions to the Tier 2 plan because of the temporary restraining order issued in the case of Michigan Judges Assn v Treasurer of Michigan, opinion of the United States District Court for the Eastern District of Michigan (Case No. 98-DT-72771-CV).

(6) Beginning January 1, 2002, a qualified participant who is a plan 1 member or a plan 2 member, on taking office and while he or she remains in office, shall contribute 2.0% of the qualified participant's compensation to the retirement system. The retirement system shall deposit the contribution under this subsection into the reserve for health benefits for hospital and medical-surgical and sick care benefits as provided in section 719.

**History:** Add. 1996, Act 523, Eff. Mar. 31, 1997 ;-- Am. 1999, Act 215, Eff. May 30, 2000 ;-- Am. 2002, Act 95, Imd. Eff. Mar. 27, 2002 ;-- Am. 2024, Act 152, Eff. Apr. 2, 2025

### **38.2665 Vesting requirements.**

Sec. 715.

(1) A qualified participant is immediately 100% vested in his or her contributions made to Tier 2. A qualified participant shall vest in the employer contributions made on his or her behalf to Tier 2 according to the following schedule:

- (a) Upon completion of 2 years of service, 50%.
- (b) Upon completion of 3 years of service, 75%.
- (c) Upon completion of 4 years of service, 100%.

(2) A qualified participant is vested in the health insurance coverage provided in section 719 if the qualified participant meets 1 of the following requirements:

(a) The qualified participant has completed 4 years of service as a qualified participant and was not a member, deferred vested member, or former nonvested member of Tier 1.

(b) The qualified participant was a member, deferred vested member, or former nonvested member of Tier 1 who made an election to participate in Tier 2 pursuant to section 701 or 701a, and who has met the service requirements he or she would have been required to meet in order to vest in health benefits under section 509.

**History:** Add. 1996, Act 523, Eff. Mar. 31, 1997 ;-- Am. 1998, Act 66, Imd. Eff. Apr. 30, 1998 ;-- Am. 1999, Act 215, Eff. May 30, 2000

### **38.2666 Participation in Tier 2; crediting years of service accrued under Tier 1.**

Sec. 716.

A qualified participant who was a member, deferred vested member, or former nonvested member of Tier 1 who makes an election to participate in Tier 2 pursuant to section 701 or 701a, shall be credited with the years of service accrued under Tier 1 on the effective date of participation in Tier 2 for the purpose of meeting the vesting requirements for benefits under section 715.

**History:** Add. 1996, Act 523, Eff. Mar. 31, 1997 ;-- Am. 1998, Act 66, Imd. Eff. Apr. 30, 1998 ;-- Am. 1999, Act 215, Eff. May 30, 2000

### **38.2667 Refund beneficiary.**

Sec. 717.

A qualified participant or former qualified participant may nominate 1 or more individuals as a refund beneficiary by filing written notice of nomination with the state treasurer. If the qualified participant or former qualified participant is married at the time of the nomination and the participant's spouse is not the refund beneficiary for 100% of the account, the nomination is not effective unless the nomination is signed by the participant's spouse. However, the state treasurer may waive this requirement if the spouse's signature cannot be obtained because of extenuating circumstances.

**History:** Add. 1996, Act 523, Eff. Mar. 31, 1997

### **38.2668 Methods of distribution.**

Sec. 718.

(1) A qualified participant is eligible to receive distribution of his or her accumulated balance in Tier 2 upon becoming a former qualified participant.

(2) Upon the death of a qualified participant or former qualified participant, the accumulated balance of that deceased participant is considered to belong to the refund beneficiary, if any, of that deceased participant. If a valid nomination of refund beneficiary is not on file with the state treasurer, the state treasurer, in a lump sum distribution, shall distribute the accumulated balance to the legal representative, if any, of the deceased participant or, if there is no legal representative, to the deceased participant's estate.

(3) A former qualified participant or refund beneficiary may elect 1 or a combination of several of the following methods of distribution of the accumulated balance:

(a) A lump sum distribution to the recipient.

(b) A lump sum direct rollover to another qualified plan, to the extent allowed by federal law.

(c) Periodic distributions, as authorized by the state treasurer.

(d) No current distribution, in which case the accumulated balance shall remain in Tier 2 until the former qualified participant or refund beneficiary elects a method or methods of distribution under subdivisions (a) to (c), to the extent allowed by federal law.

**History:** Add. 1996, Act 523, Eff. Mar. 31, 1997

### **38.2669 Health insurance coverage.**

Sec. 719.

(1) A former qualified participant may elect health insurance benefits in the manner prescribed in this section if he or she meets both of the following requirements:

(a) The former qualified participant is vested in health benefits under section 715(2).

(b) The former qualified participant meets or exceeds the benefit commencement age employed in the actuarial present value calculation under section 702 and the service requirements that would have applied to that former participant under Tier 1 for receiving health insurance coverage under section 509, if that former participant was a member of Tier 1.

(2) A former qualified participant who is eligible to elect health insurance coverage under subsection (1) may elect health insurance coverage in a health benefit plan or plans as authorized by section 509, or in another plan as provided in subsection (6). A former qualified participant who is eligible to elect health insurance coverage under subsection (1) may also elect health insurance coverage for his or her health benefit dependents, if any. A surviving health benefit dependent of a deceased former qualified participant who is eligible to elect health insurance coverage under subsection (1) may elect health insurance coverage in the manner prescribed in this section.

(3) Except as otherwise provided in subsection (6), an individual who elects health insurance coverage under this section shall become a member of a health insurance coverage group authorized pursuant to section 509.

(4) For a former qualified participant who is eligible to elect health insurance coverage under subsection (1) and who is vested in those benefits under section 715(2)(a), and for his or her health benefit dependents, this state shall pay a portion of the health insurance premium as calculated under this subsection on a cash disbursement method. An individual described in this subsection who elects health insurance coverage under this section shall pay to the retirement system the remaining portion of the health insurance coverage premium not paid by this state under this subsection. The portion of the health insurance coverage premium paid by this state under this subsection shall be 50% of the payments for health insurance coverage under section 509 if the former qualified participant has 4 years of service; 75% of the payments for health insurance coverage under section 509 if the former qualified participant has 5 years of service; or 90% of the payments for health insurance coverage under section 509 if the former qualified participant has 6 years of service. If the individual elects the health insurance coverage provided under section 509, the state shall transfer its portion of the amount calculated under this subsection to the reserve for health benefits created by section 214.

(5) For a former qualified participant who is eligible to elect health insurance coverage under subsection (1) and who is vested in those benefits under section 715(2)(b), and for his or her health benefit dependents, this state shall pay a portion of the health insurance premium as calculated under this subsection on a cash disbursement method. An individual described in this subsection who elects health insurance coverage under this section shall pay to the retirement system the remaining portion of the health insurance coverage premium not paid by this state under this subsection. The portion of the health insurance coverage premium paid by this state under this subsection shall be equal to the premium amounts paid on behalf of retirants of Tier 1 for health insurance coverage under section 509. If the individual elects the health insurance coverage provided under section 509, the state shall transfer its portion

of the amount calculated under this subsection to the reserve for health benefits created by section 214.

(6) A former qualified participant or health benefit dependent who is eligible to elect health insurance coverage under this section and who elects health insurance coverage under a different plan than the plan authorized under section 509 may elect to have an amount up to the amount of the retirement system's share of the monthly health insurance premium subsidy provided in this section paid by the retirement system directly to the other health insurance plan or to a medical savings account established pursuant to section 220 of the internal revenue code, to the extent allowed by law or under the provisions and procedures of Tier 2.

(7) If the department of management and budget receives notification from the United States internal revenue service that this section or any portion of this section will cause the retirement system to be disqualified for tax purposes under the internal revenue code, then the portion that will cause the disqualification does not apply.

**History:** Add. 1996, Act 523, Eff. Mar. 31, 1997

**38.2670 Distributions; exemption from tax; subject to taxation beginning January 1, 2012; right of setoff to recover overpayments; satisfaction of claims arising from embezzlement or fraud; correction of errors.**

Sec. 720.

(1) Except as otherwise provided in this section, distributions under Tier 1 or Tier 2 from employer contributions and earnings on those employer contributions, and distributions under Tier 1 or Tier 2 from employee contributions and earnings on those employee contributions, are exempt from any state, county, municipal, or other local tax.

(2) Beginning January 1, 2012, distributions under Tier 1 or Tier 2 from employer contributions and earnings on those employer contributions, and distributions under Tier 1 or Tier 2 from employee contributions and earnings on those employee contributions, are subject to state tax.

(3) The state treasurer has the right of setoff to recover overpayments made under this act and to satisfy any claims arising from embezzlement or fraud committed by a qualified participant, former qualified participant, refund beneficiary, or other person who has a claim to a distribution or any other benefit from Tier 2.

(4) The state treasurer shall correct errors in the records and actions in Tier 2 under this act, and shall seek to recover overpayments and shall make up underpayments.

**History:** Add. 1996, Act 523, Eff. Mar. 31, 1997 ;-- Am. 2002, Act 95, Imd. Eff. Mar. 27, 2002 ;-- Am. 2011, Act 45, Imd. Eff. May 25, 2011