

CHAPTER 490

JUDGES, RETIREMENT, JUDICIAL STANDARDS

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RETIREMENT

**490.01, 490.02** [Repealed, 1949 c 640 s 5 subd 2]

**490.025 RETIREMENT OF SUPREME COURT JUSTICES.** Subdivision 1. **Requisites.** When a justice of the supreme court, having served at least one term, arrives at the age of 70 years, or having served at least two full terms or the equivalent thereof, becomes incapacitated for the performance of his official duties to the extent that the public service suffers therefrom, and makes written application to the governor for his retirement, the governor, if he determines that such justice has arrived at such age and has served at least one term or that such disability exists, shall direct his retirement by written order which shall effect a vacancy in the office to be filled as provided by law.

Subd. 2. **Retirement compensation; amount.** A justice shall receive the compensation allotted to his office for the remainder of the term for which elected. If a justice be retired for age or disability and, at the time of his retirement, has served as a justice for two full terms or the equivalent thereof or as a justice and as a judge of the district court for 15 years he shall, after the expiration of the term for which elected or appointed, receive for the remainder of his life one half of the compensation allotted to his office at the time of his retirement plus two and one half percent of the compensation allotted to his office at the time of his retirement for each year, not exceeding 10, which he served in his office in excess of two full terms, or the equivalent thereof, on the supreme court or in excess of 15 years as a justice of such court and as a judge of the district court. All such retirement pay shall be paid by the executive director of the Minnesota state retirement system in the same manner as other benefits are paid.

Subd. 3. **Retirement age.** Where a justice of the supreme court has served for two full terms and during this period reaches the age of 70, upon the completion of this period, he may apply for and receive for the remainder of his life the equivalent of the retirement compensation granted justices of the supreme court under subdivision 2, or where a justice has served a minimum period of 15 years on the supreme court and has reached the age of 65, he may retire and apply for and receive for the remainder of his life the equivalent of the retirement compensation payable under subdivision 2 to a retired justice whose final elective term has expired.

Subd. 4. **Age limit.** Unless at the time of this enactment a justice has already reached the age of 73, he shall not acquire an increase of two and one half percent of the compensation allotted to his office in his retirement pay, as provided in subdivision 2, after he has reached the age of 73 years.

Subd. 5. **Commissioner.** Upon retirement of a justice of the supreme court, the court may appoint him a commissioner of that court to aid and assist in the performance of such of its duties as may be assigned to him with his consent.

**Subd. 6. Prior retirement.** Each justice and commissioner of the supreme court who has heretofore retired under the statutes in force at the time of his retirement shall, from the date of retirement, receive retirement compensation at the rate and for the time provided in the statutes in force at the time of retirement.

Subd. 7. [Repealed, 1967 c 700 s 10]

**Subd. 8. Clerk of supreme court.** When and after a clerk of the supreme court has arrived at the age of 65 years and has served in state elective office or offices for more than 25 years, and when the clerk of the supreme court has served in that office for 25 years or more, he or she may at any time thereafter notify the governor of his or her resignation before his or her retirement at the expiration of the term for which he or she has been last elected, and if the governor shall determine that such clerk of the supreme court has arrived at such age and has served in state elective office or offices as herein required for more than 25 years and at least 15 years continuously in the office of clerk of the supreme court, the governor shall designate by written order the effective date of such resignation or retirement. From such date such clerk of the supreme court shall receive as retirement compensation annually for the remainder of his or her life, one half of the annual compensation allotted to his or her office by Laws 1949, Chapter 740, Section 3, Item 1. Such retirement compensation shall be paid by the executive director of the Minnesota state retirement system in the same manner as other benefits are paid. The amount required therefor is hereby annually appropriated from the general fund in the state treasury.

Subd. 9. [Repealed, 1967 c 700 s 10]

[1948 c 595 s 1-4; 1953 c 360 s 1; 1953 c 455 s 1, 2; 1955 c 648 s 1; 1959 c 564 s 1; Ex-1967 c 38 s 4; 1969 c 399 s 49; 1973 c 494 s 14, 15; 1974 c 445 s 16, 17]

**490.026** [Repealed, 1959 c 688 s 6]

**490.027** [Repealed, 1949 c 640 s 5; 1949 c 645 s 3]

**490.030, 490.031** [Repealed, 1959 c 688 s 6]

**490.04 COMPULSORY RETIREMENT OF DISTRICT JUDGES.** When any judge of the district court of the state becomes mentally or physically incapacitated from performing his official duties and such incapacity shall have continued for at least six months, and the public service is suffering and will continue to suffer by reason thereof, and no application has been made by such judge or his legally appointed guardian to the governor for his retirement under and pursuant to section 490.101, any 25 or more freeholders and electors of the judicial district of such judge may petition the governor to have the question of the incapacity of such judge judicially determined, as hereinafter provided.

[1925 c 281 s 1; 1957 c 507 s 1] (211-1)

**490.05 PETITION.** The petition shall be in writing, duly verified, and shall allege said incapacity and set forth the nature and extent thereof, that such incapacity has existed for at least six months before the presentation thereof, and that the public service is suffering and will continue to suffer on account thereof unless such judge be suspended and retired from his said office.

[1925 c. 281 s. 2] (211-2)

**490.06 SUSPENSION PENDING DETERMINATION OF INCAPACITY.** Upon receiving such petition, the governor shall forthwith deliver a certified copy thereof to the attorney general, and shall file another certified copy thereof in the office of the clerk of the district court of the county in which such judge resides, together with an order suspending the judge from office until the final determination of the question of his incapacity, and shall also forthwith make and file in the clerk's office an order appointing a special term of the district court of said county, to be held at a time and place specified therein, for a hearing upon said petition, which order shall designate and assign three judges of the district court of the state to sit en banc to try and determine the question of the incapacity of such judge to perform his judicial duties, at which hearing the district judge longest in judicial service shall preside. Such hearing shall be commenced not less than 30, nor more than 60, days after the filing of the order, and certified copies of the petition and of the order shall be personally served upon the judge, upon his legally appointed guardian, if there be one, and upon the attorney general, not less than 20 days before the day set for the commencement of the hearing. After the filing of the

petition, the same shall not be withdrawn nor abandoned without full hearing, and the judges may, if necessary, appoint counsel at the expense of the state to conduct the hearing and to prepare and present evidence, and may, for cause, continue the hearing a reasonable length of time on application of said judge, his legally appointed guardian, if there be one, the petitioners, or any attorney duly appearing in said proceedings.

[1925 c. 281 s. 3] (211-3)

**490.07 PROCEDURE ON HEARING.** At such hearing, the petitioners, the said judge, and his guardian, if there be one, may appear and be heard, personally or by counsel, and may offer any competent evidence upon the issues involved. The attorney general, if in his judgment the public interest so requires, may, in person or by any reputable attorney or attorneys of the state appointed by him as special assistant attorney or attorneys general for such hearing, appear and be heard, participate in the hearing, and produce evidence thereat.

The proceedings, including all evidence offered or received, all rulings, and all orders made, shall be taken down in shorthand by some competent shorthand reporter appointed by the presiding judge, as upon other trials in the district court, but such judge shall not appoint the court reporter of such district. The said judges sitting en banc shall determine all issues of law and fact, and particularly whether such judge is, or is not, incapacitated from performing his judicial duties, and shall make and file with the clerk of the district court of such county their findings of fact upon the issues involved in said proceedings. The reporter shall forthwith, upon the completion of the hearing, transcribe his shorthand notes of the proceedings and file a certified copy thereof with the clerk.

Upon the filing of the findings of fact, the clerk shall forthwith transmit to the governor a certified copy thereof.

[1925 c. 281 s. 4] (211-4)

**490.08 ORDER FOR RETIREMENT; FILLING VACANCY.** If the judges shall find that such judge is incapacitated from the performance of his judicial duties, the governor shall, upon the expiration of the time for appeal, if no appeal is taken, and upon the final determination of such appeal, if taken, sustaining such findings, by written order, direct his retirement for the unexpired portion of his term, a certified copy of which order shall be forthwith served upon such judge and upon his legally appointed guardian, if there be one, and a copy thereof shall be filed in the office of the clerk of the county in which the hearing was had. The filing of the order, with proof of service upon such judge and his legally appointed guardian, if there be one, shall create a vacancy in the office, which shall be filled by appointment, as provided by law; and such appointee shall, upon qualifying, become the judge of the district and hold such office until a successor is elected and qualifies.

[1925 c. 281 s. 5] (211-5)

**490.09 APPEALS TO SUPREME COURT.** Within 20 days after the filing of such findings of fact, such judge, or his legally appointed guardian, the petitioners, or any one or more of them, or the attorney general may appeal from the findings to the supreme court of the state by filing a notice of such appeal with the clerk in whose office the findings are filed. The clerk shall forthwith transmit a certified copy of the notice to the clerk of the supreme court, and the supreme court shall place the matter upon the calendar for hearing at the earliest time conveniently possible, giving preference to such matter over general matters pending. The court shall also make such order in regard to printing, filing, and serving of briefs and record as shall seem proper in the premises. The clerk of the district court shall transmit to the clerk of the supreme court all records and files in the proceedings, including the reporter's transcript.

[1925 c. 281 s. 6] (211-6)

**490.10** [Repealed, 1949 c 640 s 5 subd 1]

**490.101 RETIREMENT OF DISTRICT JUDGE.** Subdivision 1. (a) When a judge of the district court who has served for not less than 15 years as such judge, or as such judge and as judge of a court of record, arrives at the age of 70 years and makes written application to the governor for retirement, the governor shall direct his retirement by a written order.

(b) When a judge of the district court who has served for at least 24 years as

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such judge, and as judge of a court of record, arrives at the age of 65 years and makes written application to the governor for retirement, the governor shall direct his retirement by a written order.

Subd. 2. When a judge of the district court becomes mentally or physically incapacitated from performing his official duties and the governor has determined that such judge shall be retired either on his own application or that of his legally appointed guardian or pursuant to Minnesota Statutes 1961, Section 490.04, such judge shall receive as retirement benefits the following:

When such judge of the district court has served for not less than 15 years as such judge, or as such judge and as a judge of a court of record, he shall receive the maximum retirement allowances provided by law for a judge of the district court pursuant to section 490.102. If such judge has served less than the number of years required for maximum retirement benefits but for a period of not less than six years, he shall receive retirement pay as that portion of the maximum retirement allowances allotted to the office for the years of service as a district court judge, or as such judge and as a judge of a court of record, prior to his retirement for disability, bears to the number of years required for the maximum retirement allowance of a district court judge. Years of service shall be determined by the whole year and not by any fraction thereof.

Subd. 3. Upon the filing of such order in the office of the secretary of state, the office of such judge shall become vacant.

Subd. 4. When the term of any judge of the district court would expire three years or less from the time when he would become eligible to retire under the provisions of this section and section 490.102, upon written application by such judge to the governor stating his intention to retire upon eligibility, the governor shall forthwith make a written order accepting such retirement application, and extending his term of office for three years or such proportion thereof as may be necessary to make him eligible for such retirement.

[1949 c 640 s 1; 1959 c 688 s 2; 1965 c 762 s 1, 2; 1974 c 129 s 1]

**490.102 COMPENSATION ALLOWANCE.** Subdivision 1. A judge who elects to retire under the provisions of section 490.101 and who has an unexpired balance of the term for which he was elected yet to run after such retirement, shall, in order to receive the retirement compensation hereinafter outlined, waive in writing the compensation allotted to his office, from the date of such retirement to the date of the expiration of the term for which such judge was elected, and receive only during such period and thereafter retirement pay as hereinafter outlined. This subdivision shall not apply to any judge who has retired prior to the effective date of this act.

Subd. 2. (a) If, at the time of retirement, he has attained the age of at least 70 years and he has served for 15 years as such judge, or as such judge and as judge of a court of record, he shall receive for the remainder of his life, one-half the compensation allotted to the office at the time of his retirement or on July 1, 1967, whichever is greater.

(b) If, at the time of retirement, he has attained the age of at least 65 years and he has served for 24 years as such judge, or as such judge and as a judge of a court of record, he shall receive for the remainder of his life, one-half of the compensation allotted to the office at the time of his retirement or on July 1, 1967, whichever is greater.

Except for per diem payments made pursuant to section 484.62, and retirement pay adjustments pursuant to section 490.025, subdivision 2, it is unlawful for any public officer to pay a retired judge an amount greater than one half of the compensation allotted to the office of such retired judge at the time of his retirement or on July 1, 1967, whichever is greater, except when said retired judge shall have been appointed by the district court, or by the supreme court, to serve as a special master in litigation before the district court; in which case per diem payments may be made to said retired judge in amounts equal to per diem payments made pursuant to section 484.62. Where such payments are hereafter made in violation of this subdivision, it is the duty of the public officer making such payment to recover the amount so paid but without interest. Such recovery may be made by as many as 30 installment deductions from future retirement payments to a retired judge or by action in the district court. Unrecovered overpayments outstanding at the time of the death of a retired judge shall be a lien upon his estate, in favor of the state of Minnesota.

Subd. 3. Any judge of the district court who is serving in such capacity on April 24, 1949 and who has attained or hereafter attains, the age of 73 or more years and has completed 15 years of service, as such judge, or as such judge and as judge of a court of record, shall receive retirement pay hereunder if he applies for retirement within one year after becoming eligible, but not otherwise.

Any judge of the district court whose initial service as such judge began after April 24, 1949, after reaching his 70th birthday, shall apply for retirement within one year after such birthday or forfeit all retirement benefits hereunder. However, if a judge of the district court has not completed 15 years of service on attaining the age of 70 years, he shall receive retirement pay hereunder if he applies for retirement within six months of the date he completes 15 years of service. Provided that any district judge past the age of 74 years still serving on the bench and for whom retirement has been allowed by a previous act passed by the 1959 legislature shall be permitted retirement allowance if he retires during his current term of office or during an extended term of three years thereafter which extension may be granted in the same manner as provided in section 490.101, subdivision 4.

Subd. 3a. If a judge of the district court has attained the age of at least 70 years and has completed ten or more years of service as a district court judge or fifteen or more years as a judge of a court of record including at least six years as a district court judge but less than the number of years required for maximum retirement benefits, he may apply for retirement and receive retirement pay of that portion of the maximum retirement allowance allotted to the office which the years of his service as a district court judge, prior to his retirement, bears to the number of years required for the maximum retirement allowance of a district court judge. Years of service shall be determined by the whole year rather than a fraction thereof. Any district court judge presently serving who is over 70 years of age shall forfeit any benefits under this subdivision if he shall serve beyond the expiration of his present term.

Subd. 4. Retirement allowances shall be paid by the executive director of the Minnesota state retirement system in the same manner as other benefits are paid. Payments by a county, if any, shall be made in the manner prescribed by the director.

Subd. 5. No retired judge shall receive retirement pay while practicing law.

Subd. 6. The widow of every judge of the district or supreme court who dies, in active service, shall be paid one-half of the retirement compensation to which such judge would have been entitled on the date of his death, if he would have been otherwise eligible for retirement under the provisions of section 490.101 or under section 490.025, and had retired on that date, irrespective of whether he shall have attained the age of retirement at the date of his death or not and irrespective of whether he had served 15 years as such judge or as a judge of a court of record, and irrespective of whether he had previously been eligible to retire, but had not retired under the provisions of section 490.101, prior to his death, provided she had been married to such judge for three years prior to his death. The widow of every judge of the district court or supreme court who dies after retiring shall be paid one-half of the retirement compensation which such judge was receiving at the date of his death.

Any judge who has heretofore retired and exercised the option previously set forth in section 490.102, shall, after July 1, 1961, be paid the full retirement compensation herein provided for, and his widow shall upon his death be entitled to compensation as herein set forth.

The term "widow" as used in this subdivision means the surviving wife of a district or supreme court judge, but only if she was married to him for a period of not less than three years immediately prior to the date of his retirement or of his death, whichever occurs first.

If such widow, either of a retired judge or a judge who dies in active service, who is otherwise qualified under this section, has not attained the age of 40 years at the time of such judge's death, such widow will not become eligible for retirement compensation payments hereunder until her 40th birthday but shall receive such payments thereafter.

A widow who is entitled to a retirement compensation under the provisions of

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this subdivision and subdivision 7 shall be paid such retirement compensation for the period of her life, unless she remarries, in which event such retirement compensation is to cease and terminate. Every judge of the district court and every judge of the supreme court shall contribute four percent of his state salary, which amount shall be deducted from his salary at least once each month and paid to the state treasurer to be deposited in a special survivor retirement account. This contribution shall be for the purpose of providing the survivor benefits established by this subdivision and subdivision 7 and such amount as may be necessary to carry out this purpose is hereby appropriated from such special retirement account. It is declared to be the policy of the legislature that the survivor benefits provided for herein shall be wholly paid from contributions by the judges to said special retirement account. To implement this policy the rate of contribution by the judges shall be reviewed periodically and contributions adjusted to make this account sufficient to cover all benefits.

Subd. 7. In addition to the provisions of Minnesota Statutes 1961, Section 490.102, Subdivision 1 to 6, inclusive, and notwithstanding the limitations thereof, the widow of every judge of the District or Supreme Court who died in active service prior to May 19, 1961, who had been married to such judge for five years prior to his death and who has now attained the age of 49 years, shall be paid during her life one-half of the retirement compensation to which such judge would have been entitled, if he had been retired as of date of death. For the purposes of this subdivision, the said judge shall be deemed to have been entitled to full retirement and to have retired as of the day of his death. If retirement of a district judge from active service was by executive order prior to enactment of Laws 1949, Chapter 640, his unmarried widow who would otherwise qualify under this section will receive one-half of the compensation such judge would have received if his retirement occurred in 1949 after enactment of that law and he was eligible for compensation thereunder.

Subd. 8. On June 30 of each year, the executive director of the Minnesota state retirement system shall review the fiscal condition of the special survivor retirement account in the light of the prospective demands for payment therefrom in the next fiscal year. If the director determines that the balance in such account on June 30 plus the prospective receipts in the next fiscal year appear to be insufficient to meet the demands on such account during the next fiscal year, the director on July 1 of each year shall make an order increasing the rate of contribution to such account by the several judges of the district court from four percent of his salary to such rate of contribution as will, in the judgment of the director, provide sufficient funds in said special survivor benefit account to pay all demand thereon during the next fiscal year. If on any following June 30, the director should determine that a lower rate of contribution will provide sufficient moneys to pay all demands on such special survivor benefit account, he may on the next July 1, make and file an order reducing the rate of contribution to such rate as will in his judgment provide sufficient moneys to meet all demands on such special account in the current fiscal year but in no event lower than four percent. Deductions of contributions shall be made in accordance with rates prescribed by law or by order of the director, as the case may be.

[1949 c 640 s 2; 1959 c 688 s 3; Ex1961 c 15 s 1-3; 1963 c 739 s 1; 1963 c 844 s 1-3; 1965 c 762 s 3-5; 1967 c 332 s 1; Ex1967 c 38 s 5; 1969 c 987 s 1; 1974 c 129 s 2; 1974 c 417 s 3; 1974 c 445 s 18, 19]

**490.103 PRIOR RETIREMENT.** A judge of the district court who has heretofore retired as provided by law shall hereafter receive one-half of the compensation allotted to the office from which he retired.

[1949 c 640 s 3; 1959 c 688 s 4; Ex1961 c 15 s 4]

**490.104 RETIREMENT UNDER SECTIONS 490.04 TO 490.09.** A judge of the district court retired under the provisions of Minnesota Statutes 1957, Sections 490.04 to 490.09, shall receive compensation as provided in sections 490.101 to 490.104.

[1949 c 640 s 4; 1959 c 688 s 5]

**490.105 RETIREMENT COMPENSATION, CERTAIN DISTRICT AND SUPREME COURT JUDGES.** The pension of a judge of the district or supreme court

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who retires before June 3, 1967, or of the widow of a judge of the district or supreme court who dies before June 3, 1967, shall remain in the same amount as was payable prior to June 3, 1967.

[*Ex*1967 c 38 s 6]

**490.11 RETIREMENT OF JUDGES OF PROBATE COURT.** When a probate judge shall become incapacitated physically or mentally from performing his judicial duties during the remainder of his term of office and shall make a written application to the governor for his retirement, setting forth the nature and extent of such disability, the governor shall make such investigation as he shall deem advisable and if he shall thereby determine that such disability exists, and that the public service is suffering and will continue to suffer by reason of such disability, he shall thereupon, by written order to be filed in the office of the secretary of state, direct the retirement of such judge for the unexpired portion of the term for which such judge was elected, which retirement shall create a vacancy in the office, which shall be filled by appointment, as provided by law.

[1931 c. 253 s. 1] (211-3)

**490.12 HALF PAY.** Subdivision 1. **Retirement under section 490.11.** When a probate judge shall be retired under the provisions of section 490.11, he shall receive the compensation allotted to his office for the remainder of his term. Thereafter, if then past 65 years of age, having served as such judge, or as such judge and as judge of a court of record, or as such judge and a referee in probate, for 24 years, or more, he shall receive one-half of the compensation allotted to his office at the time of such retirement for the remainder of his life, to be paid at the time and in the manner provided by law.

**Subd. 2. Voluntary retirement.** When a probate judge has attained the age of 70 years or more and has served as such judge, or as such judge and as judge of a court of record, or as such judge and as referee in probate, for 20 years or more, or when a probate judge has attained the age of 65 years or more and has served as such judge or as such judge and as judge of a court of record or as such judge and as referee in probate for 24 years or more, he may voluntarily retire from office, and after he has so retired he shall receive one-half of the compensation allotted to his office at the time of such retirement for the remainder of his life, to be paid at the time and in the manner provided by law for the payment of salaries of probate judges.

**Subd. 3. Service not continuous.** In computing the period of service of any probate judge for retirement purposes he shall receive credit for all periods of time served in the armed forces of the United States during any period when the United States was at war and for any period he served in the Minnesota national guard when the same had been mustered into federal service and was engaged in the Mexican border service between May 9, 1916, and March 24, 1917. Such period of service as a probate judge need not be continuous. The service of any judge in World War I and in the Mexican border service shall be deemed service hereunder, even though such service may have been prior to the commencement of any service as probate judge.

**Subd. 4. Limitations.** In no event shall the total retirement pension to a probate judge exceed the retirement pension provided by law for district judges of the county in which the probate judge held office.

**Subd. 5. Membership in other retirement pension funds.** The probate judges retirement pension as provided herein shall be reduced by the full amount of any retirement pension other than is herein provided received by a probate judge from the state, any political subdivision, or public employees retirement association, until the total reduction equals the amount of such other pension, if any, received prior to retirement as a probate judge plus the amount of the contribution, if any, made by the state or any political subdivision to fund any such other pension pursuant to section 353.27, subdivisions 3 and 5, in connection with service as probate judge or in any other capacity. The amount of each reduction shall be remitted by the county to each such contributing employer in proportion to its total contribution pursuant to section 353.27, subdivisions 3 and 5. In the event the probate judge with-

draws from any retirement pension fund other than as herein provided prior to his retirement as a probate judge, the amount contributed by the state or any political subdivision shall be computed and deducted from the probate judge's retirement over a five-year period commencing upon the date of such judge's retirement.

**Subd. 6. Extension of term of judge near retirement.** When the term of any judge of the probate court would expire three years or less from the time when he would become eligible to retire under the provisions of this section, upon written application by such judge to the governor stating his intention to retire upon eligibility, the governor shall forthwith make a written order accepting such retirement application, and extending his term of office for three years or such proportion thereof as may be necessary to make him eligible for such retirement.

**Subd. 7. Spouse's pensions.** The surviving spouse of every judge of the probate court who dies in active service shall be paid one-half of the retirement compensation to which such judge would have been entitled on the date of his death if he would have been otherwise eligible for retirement under the provisions of subdivision 2 and had retired on that date, irrespective of whether he shall have attained the age of retirement at the date of his death, or of his number of years of service, or of whether he had previously been eligible to retire but had not retired under the provisions of subdivision 2 prior to his death. The surviving spouse of every judge of the probate court who dies after retiring shall be paid one-half of the retirement compensation which such judge was receiving at the date of his death.

The term "surviving spouse" as used in this subdivision means the surviving husband or wife of a probate court judge, but only if he or she was married to the judge for a period of not less than three years immediately prior to the date of his retirement or of his death, whichever occurs first, and only if the judge was serving as such on or after the effective date of this act.

If such surviving spouse, either of a retired judge or a judge who dies in active service, who is otherwise qualified under this section, has not attained the age of 40 years at the time of such judge's death, such surviving spouse shall not be eligible to receive retirement compensation payments hereunder until his or her 40th birthday but shall receive such payments thereafter.

A surviving spouse who is entitled to a retirement compensation under the provisions of this subdivision shall be paid such retirement compensation for the period of his or her life, unless he or she remarries, in which event such retirement compensation is to cease and terminate. Every judge of the probate court shall contribute four percent of his salary, which amount shall be deducted from his salary at least once each month and paid to the state treasurer to be deposited in a special survivor retirement account. This contribution shall be for the purpose of providing the survivor benefits established by this subdivision, and such amount as may be necessary to carry out this purpose is hereby appropriated from such special retirement account. It is declared to be the policy of the legislature that the survivor benefits provided for herein shall be wholly paid from contributions by the judges to said special retirement account. To implement this policy the rate of contribution by the judges shall be reviewed periodically and contributions adjusted to make this account sufficient to cover all benefits.

**Subd. 8. Survivors' account.** On June 30 of each year, the executive director of the Minnesota state retirement system shall review the fiscal condition of the special survivor retirement account in the light of the prospective demands for payment therefrom in the next fiscal year. If the director determines that the balance in such account on June 30 plus the prospective receipts in the next fiscal year appear to be insufficient to meet the demands on such account during the next fiscal year, the director on July 1 of each year shall make an order increasing the rate of contribution to such account by the several judges of the probate court from four percent of their salaries to such rate of contribution as will, in the judgment of the director, provide sufficient funds in said special survivor benefit account to pay all demand thereon during the next fiscal year. If on any following June 30, the director should determine that a lower rate of contribution will provide sufficient moneys to pay all demands on such special survivor benefit account, he may on the next July 1, make and file an order reducing the rate of contribution to such rate as



will in his judgment provide sufficient moneys to meet all demands on such special account in the current fiscal year but in no event lower than four percent. Each county shall make deductions of contributions in accordance with rates prescribed by law or by order of the director, as the case may be.

[1931 c 253 s 2; 1947 c 183 s 1; 1947 c 472 s 1; 1949 c 473 s 1; 1953 c 126 s 1, 2; 1955 c 556 s 1; 1955 c 794 s 1, 2; Ex1961 c 25 s 1; 1967 c 115 s 1; 1967 c 841 s 1; Ex1967 c 38 s 1-3; 1974 c 445 s 20] (211-9)

NOTE: As to retirement of Freeborn county probate judge, see Laws 1965, Chapter 625.

#### UNIFORM RETIREMENT AND SURVIVORS' ANNUITIES FOR JUDGES

**490.121 DEFINITIONS.** Subdivision 1. For purposes of sections 490.121 to 490.126, terms defined in this section have the meanings given them unless the context clearly indicates otherwise.

Subd. 2. "Court" means any court of this state established by the Minnesota Constitution and any municipal, county or probate court of record.

Subd. 3. "Judge" means a judge or justice of any court.

Subd. 4. "Year of service" means a whole year, and not any fraction thereof, served as a judge at any time, or served as a referee in probate for all such referees in office prior to January 1, 1974.

Subd. 5. "Judges' retirement fund", "retirement fund" or "fund" means that fund created by section 490.123.

Subd. 6. "Annuity" means the payments made each year to an annuitant from the judges' retirement fund, pursuant to the provisions of sections 490.121 to 490.126.

Subd. 7. "Annuitant" means a judge, surviving spouse or dependent child entitled to an annuity under the provisions of sections 490.121 to 490.126.

Subd. 8. "Normal retirement date" means the last day of the month in which a judge attains the age of 65.

Subd. 9. Except as otherwise provided by sections 490.121 to 490.132, "normal retirement annuity" means an annuity to which a judge is entitled under section 490.124, subdivision 1, upon retirement on or after normal retirement date.

Subd. 10. "Early retirement date" means the last day of any month after a judge attains the age of 62 until normal retirement date.

Subd. 11. "Early retirement annuity" means an annuity to which a judge is entitled under section 490.124, subdivisions 1 and 3 upon retirement at any early retirement date.

Subd. 12. "Mandatory retirement date" means the last day of the month in which a judge has attained 70 years of age.

Subd. 13. "Disability" means permanent inability to perform the functions of judge by reason of physical or mental impairment resulting from sickness or injury.

Subd. 14. "Disability retirement date" means the last day of the first month after which the governor determines, upon voluntary application by the judge or otherwise, that a judge suffers from a disability.

Subd. 15. "Disability retirement annuity" means an annuity to which a judge is entitled under section 490.124, subdivisions 1 and 4 after retirement for reason of disability.

Subd. 16. "Surviving spouse" means the surviving husband or wife of a deceased judge.

Subd. 17. "Dependent child" means any natural or adopted child of a deceased judge who has not reached the age of 18 years, or having reached the age of 18, is under age 22 and is a full time student throughout the normal school year, unmarried and actually dependent for more than one-half of his support upon such judge for a period of at least 90 days prior to the judge's death. It also includes any natural child of the judge born after his death.

Subd. 18. "Survivor's annuity" means an annuity to which a surviving spouse or dependent child is entitled under section 490.124, subdivision 9.

Subd. 19. "Approved actuary" means any actuary who is either a fellow of the society of actuaries or who has at least 15 years of service to major public employee funds or any firm retaining such an actuary on its staff.

Subd. 20. "Actuarial equivalent" means the annual amount determined by calculations based on mortality tables, purchasable with a given amount at a stated age.

Subd. 21. "Final average compensation" means the total amount of salary payable to a judge in the highest five years of the last ten years prior to the event of maturity of benefits, divided by five; provided, however, that if the number of years of service is less than ten, the highest five shall be counted, and if the number of years is less than five, the aggregate salary in such period shall be divided by the number of months in such period and multiplied by twelve.

[1973 c 744 s 1]

**490.122 ADMINISTRATION OF JUDGES' RETIREMENT.** The judges' retirement fund shall be considered a part of the Minnesota state retirement system established by section 352.021 and shall be administered by the board of directors established by section 352.03. Except for section 352.03, and as used herein, judges are not, however, "employees" or "employees covered by the system" within the meaning and for the purposes of sections 352.01 to 352.73, nor are those sections generally applicable to the judges' retirement fund.

[1973 c 744 s 2]

**490.123 JUDGES' RETIREMENT FUND.** Subdivision 1. **Creation; contributions.** There is hereby created a special fund known as the "judges' retirement fund". The fund shall be credited with all contributions, all interest and all other income authorized by law. From this fund there are appropriated the payments authorized by sections 490.121 to 490.132 in the amounts and at times provided herein, including the expenses of administering the fund. Except as provided in section 490.128, subdivision 2, each judge shall contribute to the fund from each salary payment a sum equal to the salary multiplied by the rate of employee tax under the Federal Insurance Contributions Act as defined in section 355.01, subdivision 9. The balance of all money necessary for administering sections 490.121 to 490.132 and the judges' retirement fund, including payment of retirement compensation and other benefits under sections 490.121 to 490.132, shall be contributed to the fund by the state. The amount required therefor is hereby annually appropriated from the general fund to the judges' retirement fund.

Subd. 2. **Treasurer.** The state treasurer shall be ex officio treasurer of the judges' retirement fund and his general bond to the state shall be so conditioned as to cover all liability for his acts as treasurer of this fund. All moneys received by him pursuant to this section shall be set aside in the state treasury to the credit of the judges' retirement fund. He shall transmit monthly to the executive director described in section 352.03, subdivision 5, a detailed statement of all amounts so received and credited by him to the fund. He shall pay out the fund only on warrants issued by the commissioner of finance, upon vouchers signed by said executive director; provided that vouchers for investment may be signed by the secretary of the state board of investment.

Subd. 3. **Investment.** The director referred to in subdivision 2 shall, from time to time, certify to the state board of investment such portions of the judges' retirement fund as in his judgment may not be required for immediate use. Assets from the judges' retirement fund shall be transferred to the Minnesota adjustable fixed benefit fund for retirement and disability benefits as provided in section 11.25 and section 352.119. The state board of investment shall thereupon invest and reinvest sums so transferred, or certified, in such securities as are duly authorized legal investments for such purposes under chapter 11.

[1973 c 492 s 3; 1973 c 744 s 3]

**490.124 MATURITY OF BENEFITS; RETIREMENT AND SURVIVORS' ANNUITIES.** Subdivision 1. **Basic retirement annuity.** Except as qualified herein-after from and after mandatory retirement date, normal retirement date, early retirement date, or two years from the disability retirement date, as the case may be, a retirement annuity shall be payable to a retiring judge from the judges' retirement fund in an amount equal to two and one half percent of the judges' final average compensation multiplied by the number of years of service rendered, provided that such annuity shall not exceed 60 percent of the judges' annual salary for the year immediately preceding his retirement.

Subd. 2. **Years of service.** No judge shall be eligible for a normal or early retirement annuity at normal or early retirement date if he has less than ten years of service.

A judge who was in office on December 31, 1973 and thereafter and who, by the

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date on which his term expires, would not be eligible to retire with full benefits under statutes in effect on December 31, 1973, may apply to the governor for an extension to serve up to three additional years, stating his intention to retire upon such eligibility. Notwithstanding section 490.125, the governor shall forthwith make a written order accepting such retirement application, and extending the term of office of such judge for such period of time, not exceeding three years, as may be necessary to make such judge eligible for such retirement, solely for purposes of computing benefits hereunder.

**Subd. 3. Early retirement.** The retirement annuity provided by subdivision 1 of any judge electing to retire at an early retirement date shall be reduced by  $\frac{1}{15}$ th for each full year or fraction thereof from his retirement date to normal retirement date.

**Subd. 4. Disability retirement.** From and after disability retirement date, a disabled judge shall be entitled to (a) continuation of his full salary payable by the judge's employer, as if his office were not vacated by retirement, for a period of two full years, and (b) thereafter a disability retirement annuity computed as provided in subdivision 1, provided that such judge shall receive a minimum annuity of 25 percent of his final average compensation.

**Subd. 5. Deferred benefits.** Any benefit to which a judge is entitled under this section may be deferred until early or normal retirement date, notwithstanding termination of such judge's service prior thereto.

**Subd. 6. Part-time judges.** Notwithstanding other provisions of this section, except as provided herein service by a judge who was not paid an annual salary or who served in a jurisdiction in which the judge was entitled to practice law while serving as a judge shall be credited only at the rate of 50 percent thereof. All disqualified service may be credited to years of service for the purposes of sections 490.121 to 490.132 only if:

(a) The judge or his employer pays to the judges' retirement fund a sum equal to 5.85 percent of one half of the average salary earned during such period of part time service, plus accrued interest thereon at the rate of five percent per year compounded annually from the period of service so credited to the date payment is made;

(b) Such payment is made in not more than 36 monthly installments; and

(c) Such judge or his employer shall elect to make such payment and shall commence doing so within 60 days after the effective date of Laws 1973, Chapter 744 or after the commencement of such judge's first term in office, whichever is later.

**Subd. 7. Practice of law prohibited.** No retired judge or his spouse or children shall receive a retirement annuity while such judge is practicing law in Minnesota. For the purposes of this subdivision, "practicing law" does not mean service as a retired judge, as counsel for an indigent accused of committing a misdemeanor or felony, or service without compensation in connection with any legal assistance or legal aid program for indigents.

**Subd. 8. Exclusive normal retirement benefits.** Any judge who retires after December 31, 1973, shall be entitled to a retirement pension, retirement compensation or other retirement payment under statutes applicable solely to judges pursuant to this section only, except that any such judge in office prior to January 1, 1974, who retires at or after normal retirement age may then elect to receive during his lifetime a normal retirement annuity computed on the basis of retirement compensation provided for such judge under statutes in effect on December 31, 1973, in lieu of the amount of normal retirement annuity otherwise computed under sections 490.121 to 490.132.

**Subd. 9. Survivors' annuity.** Upon the death of a judge prior to retirement, his surviving spouse or, if there be no surviving spouse, his dependent children, shall receive an annuity, payable monthly, equal to 60 percent of the normal retirement annuity which would have been payable to the judge had the date of his death been the normal retirement date, provided that the surviving spouse or dependent children shall receive an annuity of not less than 25 percent of the judge's final average compensation.

**Subd. 10. Prior survivors' benefits; limitation.** Benefits provided under sections 490.102, subdivisions 6, and 490.12, subdivision 7, for a surviving spouse of a retired judge, payable after the death of the judge, shall be limited to:

(a) Spouses of judges who have retired prior to January 1, 1974; and

(b) Spouses of judges in office on December 31, 1973 and thereafter who elect to

continue contributions under said sections 490.102, subdivision 6 or 490.12, subdivision 7. Such contributions shall be in addition to contributions under section 490.123, and upon retirement such judge may not elect to receive any of the optional annuities under subdivision 11 unless such judge and his spouse shall waive any benefits under said sections 490.102, subdivision 6 or 490.12, subdivision 7.

No other judge in office on or after January 1, 1974, shall be required to contribute under said section 490.102, subdivision 6 or 490.12, subdivision 7.

**Subd. 11. Optional annuities.** There shall be no survivor or death benefits in connection with the death of a judge who retires after December 31, 1973, except as otherwise provided herein. Within 30 days prior to such retirement, except as provided in subdivision 10, a judge may elect to receive, in lieu of the normal retirement annuity, optional annuities which shall take the form of an annuity payable for a period certain and for life thereafter or a joint and survivor annuity. Such optional annuities shall be actuarially equivalent to an annuity for life, with no term certain, and shall be established by the governing body of the Minnesota state retirement system upon the recommendation of an approved actuary.

**Subd. 12. Refund.** Any person who ceases to be a judge but who does not qualify for a retirement annuity or other benefit under sections 490.121 to 490.132 shall be entitled to a refund of all his contributions to the judges' retirement fund with interest computed on the basis of interest assumption under the provisions of section 356.21. No refund shall be payable upon the death of a judge prior to retirement if no benefits shall be payable under subdivision 9.

[1973 c 744 s 4; 1974 c 406 s 92]

**490.125 MANDATORY RETIREMENT.** Subdivision 1. Except as otherwise provided in sections 490.121 to 490.132, each judge shall retire on his mandatory retirement date.

**Subd. 2.** Except as provided by sections 490.025, subdivision 3, 490.102, subdivisions 3 and 3a and 490.12, subdivision 2, any judge in office on December 31, 1973 who shall have attained 70 years of age on or prior to such date shall retire upon the expiration of the term of office of such judge.

[1973 c 744 s 5 subds 1, 2]

**490.126 PROCEDURES.** Subdivision 1. **Compulsory retirement.** Proceedings for compulsory retirement of a judge, if necessary, shall be conducted in accordance with the provisions of sections 490.04 to 490.09.

**Subd. 2. Vacancies.** Any judge may make written application to the governor for retirement. The governor thereupon shall direct the judge's retirement by written order which, when filed in the office of the secretary of state, shall effect a vacancy in the office to be filled as provided by law.

**Subd. 3. Application for annuity or refund.** Application for an annuity or refund under sections 490.121 to 490.132 may be made by the annuitant or by someone authorized to act in his behalf. Every application for an annuity or refund, with proof of age and years of service when required, shall be submitted to the governing body of the Minnesota state retirement system in a form prescribed by it.

**Subd. 4. Manner of payment.** Unless otherwise specifically provided by statute or agreed upon by the annuitant and the governing body of the state retirement system, annuities payable under sections 490.121 to 490.132 shall be paid in the manner and at the intervals as prescribed by the executive director of the state retirement system. The annuity shall cease with the last payment received by the annuitant in his or her lifetime.

[1973 c 744 s 6]

**490.127 SOCIAL SECURITY COVERAGE; DEFINITIONS.** Subdivision 1. For the purposes of sections 490.127 to 490.129, the terms defined in this section shall have the meanings given them, and terms defined in section 355.01, subdivisions 2, 5, 8, and 9, shall have the meanings there given them.

**Subd. 2.** "Enabling act" means sections 355.01 to 355.08.

**Subd. 3.** "Employee" means any judge, as defined in section 490.121.

**Subd. 4.** "Employing unit" means the state, county, or municipality by which a judge is employed.

[1973 c 744 s 7]

**490.128 AGREEMENTS.** Subdivision 1. Pursuant to the enabling act, the state agency, with the approval of the governor, shall supervise a referendum for the employees at a date set by the governor in accordance with the requirements of the social security act.

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Subd. 2. The referendum shall decide the question of whether or not the employment of each such employee should be excluded from or included in an agreement.

Subd. 3. Notice of referendum as required by the social security act shall contain a statement in such form as the state agency shall deem necessary and sufficient to inform the employees of the rights which accrue to them under the social security act and the effect that coverage under the social security act will have on their retirement benefits.

Subd. 4. If the governor or an official of the state designated by him for the purpose receives satisfactory evidence that the conditions specified in section 218(d)(7) of the social security act have been met, he shall so certify to the secretary of health, education and welfare.

Subd. 5. The state agency, with the approval of the governor, may enter into an agreement with the secretary of health, education and welfare, or modify any such agreement previously made, to obtain the benefits of the federal old age survivors insurance system in respect to services performed by employees of any employing unit.

Subd. 6. In accordance with section 218(d)(6)(C) of the social security act, the retirement system for judges is divided into two parts:

(a) The first part is composed of judges in office on and after December 31, 1973, and who do not desire coverage under an agreement pursuant to section 218(d) of the social security act;

(b) The second part is composed of judges in office on and after December 31, 1973, who desire such coverage and judges first in office after December 31, 1973, whose service shall constitute "employment" as defined in the social security act.

Subd. 7. Effective with respect to services performed after December 31, 1973, by employees referred to in subdivision 6, clause (b), each employing unit shall pay into the contribution fund established by section 355.04, contributions with respect to wages equal to the sum of taxes which be imposed by the federal insurance contribution act if the services covered by the agreement constituted employment within the meaning of that act.

Subd. 8. Effective January 1, 1974, as to employees referred to in subdivision 6, clause (b), contributions shall not be paid into the judges' retirement fund by such employees to the extent of the employee contribution under the federal insurance contribution act.

Subd. 9. Delinquent payments due under this section, with interest at the rate of six percent per annum, may be recovered by action in a court of competent jurisdiction against each and every employing unit liable therefor or may, at the request of the state agency, be deducted from any other moneys payable to such employing unit by any department or agency of the state.

Subd. 10. Each and every employing unit shall reimburse the state agency for its pro rata share of the cost of the administration of said agency in accordance with the rules and regulations of the state agency pertaining thereto. Such reimbursements shall be paid into the state agency revolving fund.

Subd. 11. Each and every employing unit shall make such reports in such form and containing such information as the state agency may from time to time require, and comply with such provisions as the state agency or the secretary of health, education and welfare may from time to time find necessary to assure the correctness and verification of such reports.

[1973 c 744 s 8]

**490.129 BENEFITS OFFSET.** Upon any event of maturity of benefits for any judge referred to in section 490.128, subdivision 6, clause (b), or for such judge's surviving spouse or dependent children, the amount payable from the judges' retirement fund shall be reduced by 75 percent of the amount of the employee's primary benefit payable upon such event of maturity of benefits under the social security act.

[1973 c 744 s 9]

**490.13 PAST SERVICE.** On or before October 31, 1973, on such forms as may be prescribed by the executive director of the state retirement system, each employing unit shall certify to the state retirement system the years of service and age of each judge.

[1973 c 744 s 10]

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**490.131 VALUATIONS, SURVEYS AND REPORTS.** The executive director of the Minnesota state retirement fund shall cause valuations, surveys and financial reports of this fund to be made in accordance with chapter 356.

[1973 c 744 s 11]

**490.132 ELECTION.** A judge of the supreme court, who holds office on or prior to January 1, 1974, is covered by the retirement provisions of chapter 490, and shall continue to receive all the benefits thereunder unless he elects, in writing, to come under the provisions of sections 490.121 to 490.132 by notifying the director of the state retirement system thereof by January 1, 1974. None of the provisions of sections 490.121 to 490.132 shall apply to a judge of the supreme court who does not make such election.

[1973 c 744 s 12]

## COMMISSION ON JUDICIAL STANDARDS

**490.15 ESTABLISHMENT; COMPOSITION.** The commission on judicial standards is established and consists of one judge of the district court, one judge of a municipal court, one judge of county court, two lawyers who have practiced law in the state for ten years and four citizens who are not judges, retired judges or lawyers. The commission may employ or appoint an executive secretary. Members representing the district, municipal and county courts shall be appointed by their respective judicial organizations and the lawyer members shall be appointed by the board of governors of the Minnesota state bar association. The citizen members shall be appointed by the governor with the advice and consent of the senate. The term of each member shall be four years, except that one of the lawyer members and two of the citizen members first appointed shall serve for two years. No member shall serve more than two full four-year terms or their equivalent. Membership terminates if a member ceases to hold the position that qualified him for appointment. Members, other than judges who serve without compensation, shall be paid \$35 per day spent in the performance of their duties, and all members shall be reimbursed for necessary expenses incurred in the performance of their duties.

[1971 c 909 s 1; 1973 c 214 s 2; 1974 c 514 s 1]

**490.16 POWERS.** Subdivision 1. A judge is disqualified from acting as a judge, without loss of salary, while there is pending an indictment or any information charging him with a crime punishable as a felony under Minnesota or federal law, or a recommendation to the supreme court by the commission on judicial standards for his removal or retirement.

Subd. 2. On recommendation of the commission on judicial standards or on its own motion, the supreme court may suspend a judge from office without salary when he pleads guilty or no contest or is found guilty of a crime punishable as a felony under Minnesota or federal law or any other crime that involves moral turpitude. If his conviction is reversed, suspension terminates and he shall be paid his salary for the period of suspension. If he is suspended and his conviction becomes final, the supreme court shall remove him from office.

Subd. 3. On recommendation of the commission on judicial standards, the supreme court may retire a judge for disability that seriously interferes with the performance of his duties and is or is likely to become permanent, and censure or remove a judge for action or inaction occurring not more than four years prior to such action being reported to the commission on judicial standards that may constitute persistent failure to perform his duties, habitual intemperance or conduct prejudicial to the administration of justice that brings the judicial office into disrepute.

Subd. 4. A judge retired by the supreme court shall be considered to have retired voluntarily. A judge removed by the supreme court is ineligible for judicial office and the question of his right to practice law in this state shall be referred to the proper authority for review.

Subd. 5. The supreme court shall make rules to implement this section and provide for confidentiality of proceedings.

Subd. 6. Sections 490.15 to 490.17, shall not affect the right of a judge who is suspended, retired or removed hereunder from qualifying for any pension or other retirement benefits to which he would otherwise be entitled by law.

[1971 c 909 s 2]

**490.17** [Repealed, 1973 c 214 s 3]

**490.18 PERSONS AFFECTED.** The provisions of sections 490.15 and 490.16 apply to all judges, judicial officers, referees and justices of the peace.

[1973 c 214 s 1]