

FIRST REGULAR SESSION

HOUSE BILL NO. 35

102ND GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE BILLINGTON.

0760H.011

DANA RADEMAN MILLER, Chief Clerk

AN ACT

To repeal sections 476.458, 476.521, and 476.565, RSMo, and to enact in lieu thereof three new sections relating to retirement of judges, with a contingent effective date for certain sections.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Sections 476.458, 476.521, and 476.565, RSMo, are repealed and three
2 new sections enacted in lieu thereof, to be known as sections 476.458, 476.521, and 476.565,
3 to read as follows:

476.458. 1. Except as otherwise provided in this section, or by any other law,
2 magistrate judges, probate judges, and probate ex officio magistrate judges shall retire at the
3 age of [~~seventy~~] **seventy-five** years and may participate, if otherwise eligible, in the
4 retirement plan established by sections 476.515 to 476.570, except that, the provisions of
5 sections 476.458, 478.015, 478.021, 478.071, 478.072, 482.040, 482.090, 482.230, 482.300
6 to 482.365 and 483.497 shall not prevent any person holding the office of magistrate judge,
7 probate judge or probate ex officio magistrate judge, or any person elected or appointed to the
8 office of magistrate judge, probate judge or probate ex officio magistrate judge from holding
9 office during the remainder of the term to which he was elected or appointed.

10 2. Any magistrate judge, probate judge not under the nonpartisan court plan, or
11 probate ex officio magistrate judge who on August 13, 1976, or within six months thereafter,
12 is seventy years of age or older, may petition the commission on retirement, removal and
13 discipline to continue to serve until age seventy-six if he has not completed a total of twelve
14 years of service as a judge. Except as otherwise provided by any other law, any magistrate
15 judge, probate judge not under the nonpartisan court plan, or probate ex officio magistrate

EXPLANATION — Matter enclosed in bold-faced brackets [~~thus~~] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

16 judge, who is in office on August 13, 1976, may, within six months before attaining the age of
17 seventy years, petition the commission on retirement, removal, and discipline to be allowed to
18 serve after he has attained that age until age seventy-six or has completed a total of twelve
19 years of service as a judge, whichever shall occur first. If the commission finds the petitioner
20 to be able to perform his duties and approves such service, the petitioner may continue to
21 serve as such a judge until age seventy-six if he has not completed a total of twelve years of
22 service as a judge at such age. No person shall be permitted to serve as such a judge beyond
23 the age of seventy-six years regardless of whether or not he has completed a total of twelve
24 years except for the purpose of completing the term to which he was elected or appointed, as
25 provided in subsection 1 of this section.

26 3. Any magistrate, regardless of age elected in 1976 to fill an unexpired term shall be
27 permitted to complete that term.

476.521. 1. Notwithstanding any provision of chapter 476 to the contrary, each
2 person who first becomes a judge on or after January 1, 2011, and continues to be a judge may
3 receive benefits as provided in sections 476.445 to 476.688 subject to the provisions of this
4 section.

5 2. Any person who is at least sixty-seven years of age, has served in this state an
6 aggregate of at least twelve years, continuously or otherwise, as a judge, and ceases to hold
7 office by reason of the expiration of the judge's term, voluntary resignation, or retirement
8 pursuant to the provisions of Subsection 2 of Section 24 of Article V of the Constitution of
9 Missouri may receive benefits as provided in sections 476.515 to 476.565. The twelve-year
10 requirement of this subsection may be fulfilled by service as judge in any of the courts
11 covered, or by service in any combination as judge of such courts, totaling an aggregate of
12 twelve years. Any judge who is at least sixty-seven years of age and who has served less than
13 twelve years and is otherwise qualified under sections 476.515 to 476.565 may retire after
14 reaching age sixty-seven, or thereafter, at a reduced retirement compensation in a sum equal
15 to the proportion of the retirement compensation provided in section 476.530 that his or her
16 period of judicial service bears to twelve years.

17 3. Any person who is at least sixty-two years of age or older, has served in this state
18 an aggregate of at least twenty years, continuously or otherwise, as a judge, and ceases to hold
19 office by reason of the expiration of the judge's term, voluntary resignation, or retirement
20 pursuant to the provisions of Subsection 2 of Section 24 of Article V of the Constitution of
21 Missouri may receive benefits as provided in sections 476.515 to 476.565. The twenty-year
22 requirement of this subsection may be fulfilled by service as a judge in any of the courts
23 covered, or by service in any combination as judge of such courts, totaling an aggregate of
24 twenty years. Any judge who is at least sixty-two years of age and who has served less than
25 twenty years and is otherwise qualified under sections 476.515 to 476.565 may retire after

26 reaching age sixty-two, at a reduced retirement compensation in a sum equal to the proportion
27 of the retirement compensation provided in section 476.530 that his or her period of judicial
28 service bears to twenty years.

29 4. All judges under this section required by the provisions of Section 26 of Article V
30 of the Constitution of Missouri to retire at the age of [~~seventy~~] **seventy-five** years shall retire
31 upon reaching that age.

32 5. The provisions of sections 104.344, 476.524, and 476.690 shall not apply to judges
33 covered by this section.

34 6. A judge shall be required to contribute four percent of the judge's compensation to
35 the retirement system, which shall stand to the judge's credit in his or her individual account
36 with the system, together with investment credits thereon, for purposes of funding retirement
37 benefits payable as provided in sections 476.515 to 476.565, subject to the following
38 provisions:

39 (1) The state of Missouri employer, pursuant to the provisions of 26 U.S.C. Section
40 414(h)(2), shall pick up and pay the contributions that would otherwise be payable by the
41 judge under this section. The contributions so picked up shall be treated as employer
42 contributions for purposes of determining the judge's compensation that is includable in the
43 judge's gross income for federal income tax purposes;

44 (2) Judge contributions picked up by the employer shall be paid from the same source
45 of funds used for the payment of compensation to a judge. A deduction shall be made from
46 each judge's compensation equal to the amount of the judge's contributions picked up by the
47 employer. This deduction, however, shall not reduce the judge's compensation for purposes
48 of computing benefits under the retirement system pursuant to this chapter;

49 (3) Judge contributions so picked up shall be credited to a separate account within the
50 judge's individual account so that the amounts contributed pursuant to this section may be
51 distinguished from the amounts contributed on an after-tax basis;

52 (4) The contributions, although designated as employee contributions, are being paid
53 by the employer in lieu of the contributions by the judge. The judge shall not have the option
54 of choosing to receive the contributed amounts directly instead of having them paid by the
55 employer to the retirement system;

56 (5) Interest shall be credited annually on June thirtieth based on the value in the
57 account as of July first of the immediately preceding year at a rate of four percent. Interest
58 credits shall cease upon retirement of the judge;

59 (6) A judge whose employment is terminated may request a refund of his or her
60 contributions and interest credited thereon. If such judge is married at the time of such
61 request, such request shall not be processed without consent from the spouse. A judge is not
62 eligible to request a refund if the judge's retirement benefit is subject to a division of benefit

63 order pursuant to section 104.312. Such refund shall be paid by the system after ninety days
64 from the date of termination of employment or the request, whichever is later and shall
65 include all contributions made to any retirement plan administered by the system and interest
66 credited thereon. A judge may not request a refund after such judge becomes eligible for
67 retirement benefits under sections 476.515 to 476.565. A judge who receives a refund shall
68 forfeit all the judge's service and future rights to receive benefits from the system and shall
69 not be eligible to receive any long-term disability benefits; provided that any judge or former
70 judge receiving long-term disability benefits shall not be eligible for a refund. If such judge
71 subsequently becomes a judge and works continuously for at least one year, the service
72 previously forfeited shall be restored if the judge returns to the system the amount previously
73 refunded plus interest at a rate established by the board;

74 (7) The beneficiary of any judge who made contributions shall receive a refund upon
75 the judge's death equal to the amount, if any, of such contributions less any retirement benefits
76 received by the judge unless an annuity is payable to a survivor or beneficiary as a result of
77 the judge's death. In that event, the beneficiary of the survivor or beneficiary who received
78 the annuity shall receive a refund upon the survivor's or beneficiary's death equal to the
79 amount, if any, of the judge's contributions less any annuity amounts received by the judge
80 and the survivor or beneficiary.

81 7. The employee contribution rate, the benefits provided under sections 476.515 to
82 476.565 to judges covered under this section, and any other provision of sections 476.515 to
83 476.565 with regard to judges covered under this section may be altered, amended, increased,
84 decreased, or repealed, but only with respect to services rendered by the judge after the
85 effective date of such alteration, amendment, increase, decrease, or repeal, or, with respect to
86 interest credits, for periods of time after the effective date of such alteration, amendment,
87 increase, decrease, or repeal.

88 8. Any judge who is receiving retirement compensation under section 476.529 or
89 476.530 who becomes employed as an employee eligible to participate in the closed plan or in
90 the year 2000 plan under chapter 104, shall not receive such retirement compensation for any
91 calendar month in which the retired judge is so employed. Any judge who is receiving
92 retirement compensation under section 476.529 or section 476.530 who subsequently serves
93 as a judge as defined pursuant to subdivision (4) of subsection 1 of section 476.515 shall not
94 receive such retirement compensation for any calendar month in which the retired judge is
95 serving as a judge; except that upon retirement such judge's annuity shall be recalculated to
96 include any additional service or salary accrued based on the judge's subsequent service. A
97 judge who is receiving compensation under section 476.529 or 476.530 may continue to
98 receive such retirement compensation while serving as a senior judge or senior commissioner
99 and shall receive additional credit and salary for such service pursuant to section 476.682.

476.565. Any person [~~under the age of seventy-six~~] who receives retirement
2 compensation under the provisions of sections 476.515 to 476.570 may engage in the practice
3 of law or do law business at any time after his **or her** retirement [~~if he makes himself~~
4 ~~available to serve as appointed defense counsel for indigent persons who may be charged with~~
5 ~~a violation of any of the criminal laws of this state. Such appointments shall not exceed six~~
6 ~~cases involving prosecution for a violation of a criminal law classified as a felony in any~~
7 ~~calendar year, and any person so appointed shall not receive any compensation therefor but~~
8 ~~may be reimbursed for his actual and necessary out of pocket expenses from funds~~
9 ~~appropriated for the support of public defender activities. The supreme court may excuse any~~
10 ~~such person from so serving as appointed defense counsel upon a showing of physical or~~
11 ~~mental condition which would preclude such service. Any person of the age of seventy-six or~~
12 ~~over who retires or is retired under the provisions of sections 476.515 to 476.570 may engage~~
13 ~~in the practice of law without making himself available to serve as appointed defense~~
14 ~~counsel].~~

Section B. The repeal and reenactment of sections 476.458 and 476.521 of this act
2 shall become effective upon the passage of a constitutional amendment modifying the
3 retirement age of judges.

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