

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

**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