HOUSE DOCKET, NO. 51 FILED ON: 1/15/2019

HOUSE . . . . . No. 51

So much of the recommendations of the Department of the State Treasurer (House, No. 27) as relates to joint and last survivor allowance for judicial retirement benefits. Public Service.

The Commonwealth of Massachusetts

In the One Hundred and Ninety-First General Court
(2019-2020)

An Act relative to joint and last survivor allowance for judicial retirement benefits.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

Chapter 32 of the General Laws, as appearing in the 2016 Official Edition, is hereby amended by striking out section 65C and inserting in place thereof the following section:-

Section 65C: Joint and Survivor Allowance

(1) A chief justice, justice, associate justice, judge, associate judge, or special justice, hereinafter in this section called judge, who is retired or who resigns and who is entitled to a pension or retirement allowance for life under the provisions of section sixty-five A, sixty-five B sixty-five D, sixty-five F, or sixty-five I may elect to receive, in lieu thereof, a pension or retirement allowance for life at a lesser annual rate with provision that upon his death, there shall be paid to such surviving eligible beneficiary as such member shall have nominated in his written election of this option, two-thirds of such pension or retirement allowance for life at a lesser annual rate provided, however, that if such eligible beneficiary dies on or after the date such lesser retirement allowance becomes effective and before the death of such member, such

member thereafter shall be paid a full retirement allowance and may not choose another option. Such full retirement allowance shall be determined by multiplying the amount of the lesser retirement allowance at the time of the death of such eligible beneficiary by a fraction the numerator of which is the yearly amount of the full retirement allowance which such member would have received at the time his retirement allowance became effective, and the denominator of which is the yearly amount of the lesser retirement allowance which such member received at the time his retirement allowance first became effective. The yearly amount of such lesser retirement allowance shall be determined so that the value, on the date such allowance becomes effective, of the prospective payments to such member and to such eligible beneficiary shall be the actuarial equivalent of the value on such date of the full retirement allowance; provided, however, that the yearly amount of such lesser retirement allowance shall be decreased to reflect the costs to the system of providing full retirement allowances in accordance with the first sentence of this paragraph. Such election shall be in writing on a prescribed form and filed with the appropriate retiring authority at the time of retirement or resignation or within thirty days thereafter. The computation of said actuarial equivalent shall be subject to supervision and verification in accordance with the provisions of section twenty-one by the actuary appointed by the public employee retirement administration commission.

No person shall be eligible for nomination as beneficiary under the joint and survivor allowance under this section unless such person is the spouse, former spouse who has not remarried, child, father, mother, sister or brother of such member.

If a spouse receiving an allowance as beneficiary under this option dies leaving any children of the deceased member and of such spouse who are under age eighteen, such amount as would have been paid to such spouse shall be divided into such number of equal shares as there

are such children, and each such share shall be paid to a guardian for the benefit of each such child until the child reaches age eighteen.

(2) At any time prior to his retirement a judge upon his written notice on a prescribed form filed with the state retirement board prior to his death, may nominate an eligible beneficiary as set forth under sub section (1) of this section, who if such member dies before being retired shall receive the yearly amount of the joint and survivor allowance to which such member would have been entitled had his retirement taken place on the date of his death.

If a judge, who would be entitled, upon resigning, to a pension or retirement allowance for life under sections sixty-five A, sixty-five B or sixty-five D, dies before resigning, the provisions of paragraph (d) of sub-section 2 or section 12 of Chapter 32 shall apply.

If a judge forty-five years of age or over but under the age of seventy who would be entitled, upon resigning, to a pension or retirement allowance for life under section sixty-five A or sixty-five D except for not having attained age seventy, or if a judge forty-five years of age or over but under the age of sixty-five, who would be entitled upon resigning to a pension or retirement allowance under said section sixty-five A or sixty-five D, except for not having attained age sixty-five, or if a judge fifty-five years of age or over but under age sixty-five, who would be entitled upon resigning to a pension or retirement allowance for life under section sixty-five B, except for not having attained age sixty-five dies before resigning, the judge's eligible beneficiary shall receive a pension or retirement allowance for life computed as provided in the second paragraph except that, in making such computation the proportion of the annual rate of salary payable to a judge under section sixty-five A or sixty-five D or the proportion of the average yearly earning for the required years of service payable to a judge

under section sixty-five B shall be reduced by one per cent for each year or part thereof by which the date of death precedes the attainment of the age at which the judge would have received, upon resigning, his pension or retirement allowance for life under section sixty-five A, sixty-five B or sixty-five D, respectively.

Pensions under this section payable to surviving beneficiaries shall be paid from the same source and in the same manner as the salaries of like judicial officers of the court from which the judge was retired or resigned or of which he was a judge at the time of his death are paid. Retirement allowances under this section payable to surviving beneficiaries of judges subject to the requirements of paragraphs (a) and (b) of section sixty-five D shall be paid pursuant to the provisions of paragraph (h) of section sixty-five D.

The provisions of sub-sections (1) and (2) of this section shall not apply to a surviving spouse unless such surviving spouse and such deceased judge were living together at the time of such judge's death or, if living apart, they were living apart, in the opinion of the appropriate retiring authority, for justifiable cause other than desertion or moral turpitude on the part of such surviving spouse. Payments under said second and third paragraphs shall terminate upon the remarriage of such surviving spouse.

In determining whether a judge who was appointed prior to January second, nineteen hundred and seventy-five, has served in any office or offices at least ten years continuously and would be for the purposes of the second or third paragraphs of this section, entitled to a pension for life under section sixty-five A or sixty-five B the period, not exceeding one year, of his wartime service as defined in section one of chapter thirty-one, whether before or after his

appointment as a judge, shall be added to and deemed continuous with the period of his service in any such office or offices.

In determining whether a judge who was appointed prior to January second, nineteen hundred and seventy-five, has served in any such office or offices at least ten years continuously and would be, for the purposes of the second or third paragraph of this section, entitled to a pension for life under section sixty-five A or sixty-five B, each three years spent by him in the service of the commonwealth or of any county, city or town thereof shall count as one year of creditable service and each such year so credited, but in no event to exceed more than four years of such creditable service, shall be added to and deemed continuous with the period of his service in any such office or offices.

If a judge subject to the provisions of paragraphs (a) and (b) of section sixty-five D dies before resigning or before retiring and if the eligible beneficiary is not entitled to a pension or retirement allowance under the provisions of this section, or if a judge subject to the provisions of paragraphs (a) and (b) of said section sixty-five D dies before resigning or before retiring and if there is no eligible beneficiary who is eligible to receive a pension or retirement allowance under the provisions of this section, all funds previously withheld and deducted under the provisions of paragraph (b) of said section sixty-five D plus interest shall be returned to the estate of the deceased.