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GOVERNMENT CODE - GOV

TITLE 2. GOVERNMENT OF THE STATE OF CALIFORNIA [8000 - 22980] (Title 2 enacted by Stats. 1943, Ch. 134.)

DIVISION 2. LEGISLATIVE DEPARTMENT [8902 - 10606] (Division 2 enacted by Stats. 1943, Ch. 134.)

PART 1. LEGISLATURE [8902 - 9937] (Part 1 enacted by Stats. 1943, Ch. 134.)

CHAPTER 3.5. Retirement of Legislators [9350 - 9378] (Chapter 3.5 added by Stats. 1947, Ch. 879.)

ARTICLE 6. Benefits [9359 - 9360.11] (Article 6 added by Stats. 1947, Ch. 879.)

9359. Upon his or her written application to the Board of Administration, (a) a member of this system who was a member on the effective date of this amendment who has attained 60 years of age, (b) a member who hereafter becomes a member of this system who has attained 60 years of age and who is credited with 4 or more years of service, or (c) a member, regardless of age, who is credited with 20 or more years of service, shall be retired, and thereafter shall receive for life the retirement allowance provided in this chapter.

A written application for retirement may be filed at any time during the term of office of the member, or within 30 days after the expiration of his or her term of office. An application that does not specify a different date as the effective date of retirement applied for shall be deemed to be an application for retirement as of the day following the expiration of the term of office of the member.

(Amended by Stats. 2007, Ch. 130, Sec. 113. Effective January 1, 2008.)

9359.01. (a) Notwithstanding any other provision of this part, the benefits payable to any person who becomes a member for the first time on or after January 1, 1990, shall be subject to the limitations set forth in Section 415 of the Internal Revenue Code.

(b) Notwithstanding any other law, the benefits payable to any person who became a member prior to January 1, 1990, shall be subject to the greater of the following limitations as provided in Section 415(b)(10) of the Internal Revenue Code:

(1) The limitations set forth in Section 415 of the Internal Revenue Code.

(2) The accrued benefit of a member under this system (determined without regard to any amendment to the system made after October 14, 1987).

(Amended by Stats. 1999, Ch. 83, Sec. 69. Effective January 1, 2000.)

9359.02. (a) The amount of compensation used to compute benefits payable to any person who becomes a member of this system on or after July 1, 1996, may not exceed the limitations upon public retirement systems set forth in Section 401(a)(17) of Title 26 of the United States Code, as that section may be amended from time to time and as that limit may be adjusted by the Commissioner of Internal Revenue for increases in the cost of living.

(b) The determination of compensation for each 12-month period shall be subject to the annual compensation limit in effect for the calendar year in which the 12-month period begins. In a determination of average annual compensation over more than one 12-month period, the amount of compensation taken into account for each 12-month period shall be subject to the applicable annual compensation limit.

(Added by Stats. 2003, Ch. 10, Sec. 1. Effective May 14, 2003.)

9359.03. If a person qualifies to retire as a legislative statutory officer, and has held more than one of the offices enumerated in Section 9350.55, his benefits payable under this chapter shall be computed on the basis of the office having the higher salary.

(Added by Stats. 1969, Ch. 193.)

9359.05. The amount of compensation that is taken into account in computing benefits payable to any person who first becomes a member of this system on or after July 1, 1996, shall not exceed the limitations in Section 401(a)(17) of Title 26 of the United States

Code upon public retirement systems, as that section may be amended from time to time and as that limit may be adjusted by the Commissioner of Internal Revenue for increases in cost of living. The determination of compensation for each 12-month period shall be subject to the annual compensation limit in effect for the calendar year in which the 12-month period begins. In a determination of average annual compensation over more than one 12-month period, the amount of compensation taken into account for each 12-month period shall be subject to the applicable annual compensation limit.

(Added by Stats. 1995, Ch. 829, Sec. 9. Effective January 1, 1996.)

9359.06. (a) The cost-of-living adjustments under Section 415(d) of the Internal Revenue Code to the limits described in Section 415(b) of the Internal Revenue Code, as prescribed by the regulations of the Department of the Treasury of the United States, are hereby incorporated by reference and shall continue to apply after a member's severance from employment or annuity starting date. The amount payable to a member in any limitation year, including cost-of-living adjustments provided under this chapter, shall not exceed the limit applicable under Section 415(b) of the Internal Revenue Code at the annuity starting date, as increased in subsequent years pursuant to Section 415(d) of the Internal Revenue Code and the associated regulations.

(b) Notwithstanding any other law, and except as provided in subdivision (a), the retirement allowance of a member shall be increased to reflect cost-of-living adjustments to the limits contained in Section 415 of Title 26 of the United States Code as provided in Section 415(d) of that code, provided that the member's allowance determined without regard to Section 415 equals or exceeds the applicable limit as indexed. Nothing in this section is intended to, nor shall be construed to, entitle a retired member to an adjustment to their allowance in excess of that provided pursuant to this chapter.

(c) Nothing in this section shall change the formula used to calculate benefits under this chapter.

(Added by Stats. 2021, Ch. 304, Sec. 1. (AB 1293) Effective January 1, 2022.)

9359.1. (a) The retirement allowance for a member all of whose credited service was rendered as a Member of the Senate or Assembly, except as provided in subdivision (d), is an annual amount equal to 5 percent of the compensation payable, at the time payments of the allowance fall due, to incumbent Members of the Senate or Assembly, multiplied by the number of years of service with which the member is credited at the time of his or her retirement, not to exceed 15 years. In no event shall any retirement allowance payable under this chapter to a member exceed the compensation payable to Members of the Legislature at the time the payment of the allowance is made, except that the retirement allowance of a member who is credited with more than 15 years shall be increased by an amount equal to 3 percent of the compensation payable, at the time payment of the allowance falls due, to incumbent Members of the Senate or Assembly for each year or fraction of a year in excess of 15 years.

(b) The retirement allowance for a member all of whose credited service was rendered as the Insurance Commissioner or as an elective officer of the state whose office is provided for by the Constitution other than a judge or a Member of the Senate or Assembly is the sum of (1) an annual amount equal to 5 percent of the highest compensation received by the officer while serving in that office, multiplied by the number of years of service with which the member is credited at the time of his or her retirement, not to exceed 8 years, plus, if the member is credited with 24 or more years of service, (2) $1\frac{2}{3}$ percent of the compensation to which the 5-percent rate is applicable under subparagraph (1) for his or her first 8 years of credited service, multiplied by the number of years of service in excess of 8 years with which the member is credited at the time of his or her retirement, not to exceed 12 years of credited service in excess of the 8 years of service referred to in subparagraph (1).

(c) The retirement allowance for a member part of whose credited service was rendered as a Member of the Senate or Assembly and part of whose credited service was rendered as the Insurance Commissioner or as an elective officer of the state whose office is provided for by the Constitution, other than a judge or a Member of the Senate or Assembly, is the sum of (1) an annual amount equal to 5 percent of all the compensation, at the time payment of the allowance falls due, to the officer holding the highest salaried office that the member held at any time during his or her service prior to retirement, multiplied by the number of years of service with which the member is credited at the time of his or her retirement, not to exceed 8 years, plus, if the member is credited with 24 or more years of service, (2) $1\frac{2}{3}$ percent of the compensation to which the 5-percent rate is applicable under subparagraph (1) for his or her first 8 years of credited service, multiplied by the number of years of service rendered as the Insurance Commissioner or as an elective officer of the state whose office is provided for by the Constitution, other than a judge or a Member of the Senate or Assembly, with which the member is credited at the time of his or her retirement, not to exceed 12 years of that credited service in excess of the 8 years referred to in subparagraph (1). If, however, the member would be entitled to receive a greater allowance under subdivision (a), (b), or (d) if all of his or her credited service had been rendered as a Member of the Senate or Assembly or as the Insurance Commissioner or as an elective officer of the state whose office is provided for by the Constitution other than a judge or a Member of the Senate or Assembly, then all of his or her credited service shall be deemed to have been rendered as a Member of the Senate or Assembly or as an elective officer, and he or she shall receive a retirement allowance computed under subdivision (a), (b), or (d), whichever is greater.

(d) The retirement allowance for a member, all of whose service was rendered as a Member of the Senate or Assembly, who is the surviving spouse of a deceased Member of the Senate or Assembly and who becomes the immediate successor in office of a deceased Member of the Senate or Assembly is an annual amount equal to 5 percent of the compensation payable, at the time the

payments of the allowance fall due, to incumbent Members of the Senate or Assembly, multiplied by the number of years of service with which the member is credited at the time of retirement plus the number of years of service as a Member of the Senate or Assembly rendered by the member's deceased spouse plus any period in the term, for which the deceased member was elected, following his or her death, not to exceed 15 years. In no event shall any retirement allowance payable under this chapter to a member exceed the compensation payable to Members of the Legislature at the time the payment of the allowance is made, except that the retirement allowance of a member, whose total service creditable under this subdivision is in excess of 15 years, shall be increased by an amount equal to 3 percent of the compensation payable, at the time payment of the allowance falls due, to incumbent Members of the Senate or Assembly for each year or fraction of a year in excess of 15 years. This same computation of total service creditable shall be used as a basis in determining eligibility for retirement, under Sections 9359 and 9359.16, of a member described in this subdivision. A member to whom this subdivision applies shall redeposit an amount equal to the contributions that were required to be contributed by his or her deceased spouse while he or she was a member of the system for his or her service, computed on the basis of the salary and rate of contribution in effect at the time service was rendered, or would have been rendered, in the Legislators' Retirement Fund on account of the service of his or her deceased spouse in order to use that service for the purposes of this section and Sections 9359 and 9359.16.

The amendments to this section enacted at the 1969 Regular Session shall apply with respect to a member who retired or retires, or died or dies while eligible to retire on or after May 1, 1969, and any allowance payable with respect to that member who retired or died prior to the effective date of that amendment, shall be adjusted effective from the date of retirement or death to the amount it would have been had the amendment been in effect on that date.

Sections 9359.11 and 9359.12 shall control over any conflicting provisions of this section.

The amendments to this section during the 1973–74 Second Extraordinary Session shall not be applicable to members who are retired on the effective date of the amendments.

(Amended by Stats. 2007, Ch. 130, Sec. 114. Effective January 1, 2008.)

9359.10. The retirement allowance for a legislative statutory officer is an annual amount equal to 3 percent of the compensation payable to the officer at the time the officer vacates that legislative statutory office, or payable to the incumbent of that legislative statutory office at the time payments of the allowance fall due, whichever is higher, multiplied by the number of years of service with which the legislative statutory officer is entitled to be credited at the time of the officer's retirement. In no event shall the allowance payable under this section exceed two-thirds of the compensation payable to the legislative statutory officer at the time the officer vacates that legislative statutory office, or two-thirds of the compensation payable to the incumbent of that legislative statutory office at the time payments of the allowance fall due, whichever is the higher; provided, however, the allowance shall be further adjusted to reflect cost-of-living increases occurring after the retirement of the legislative statutory officer as determined under Section 9360.10 without respect to the limitations set forth in this section.

If a legislative statutory officer is entitled to a retirement allowance under any other state administered public retirement system, and the officer's total retirement allowances under both systems exceed the maximum allowance to which the officer would be entitled under this section with 20 years service in that legislative statutory office, the allowance payable under this section shall be reduced to the amount that it, combined with the retirement allowance to which the officer is entitled under the other system, does not exceed the maximum allowance to which the officer would be entitled under this section with $22\frac{1}{3}$ years service in that legislative statutory office.

The retirement allowance for a person who first commences service in any of the offices listed in Section 9350.55 or who becomes a member of this system on or after January 1, 1982, shall be based on compensation payable to that officer at retirement. In no event shall the allowance be based on a compensation greater than the compensation the member received for such service.

(Amended by Stats. 1981, Ch. 549, Sec. 2. Effective September 19, 1981.)

9359.11. Any contrary provisions of Section 9359.1 notwithstanding, in computing the retirement allowance of a legislator member of the Legislators' Retirement System whose service as a legislator ended prior to the term commencing in 1967, the salary to which the applicable formula shall be applied shall be five hundred dollars (\$500) per month, and any increase in salary of legislators above such amount shall be disregarded for such purpose.

(Added by Stats. 1966, 1st Ex. Sess., Ch. 163.)

9359.12. (a) Any contrary provisions of Section 9359.1 or Section 9360.9 notwithstanding, and subject to the further limitations in subdivision (b), the retirement allowance of any member of the Legislators' Retirement System who serves as a legislator during or after the term commencing in 1967 shall be the sum of: (1) the amount determined by application of the formula provided by Section 9359.1 to the first five hundred dollars (\$500) per month of salary payable to the legislator at the time of his or her retirement, plus (2) an amount equal to 3 percent of the amount of such salary in excess of five hundred dollars (\$500) per month multiplied by the number of years credited the member, or two-thirds of the amount of such salary payable to the legislator at the time of his or her retirement, whichever is the lesser, plus, in the case of members credited with service prior to the term commencing in 1967, an

amount equal to a cost-of-living increase computed under Section 9360.9 as of January 1, 1967, on that portion of the allowance based on five hundred dollars (\$500) per month, and said total to be further adjusted to reflect cost-of-living increases occurring after the member's retirement as determined under Section 9360.10.

(b) Except as provided in subdivision (c), during such time as he or she serves in any salaried public office any retired member of the Legislators' Retirement System who served as a legislator during or after the term commencing in 1967 shall receive a retirement allowance computed by application of the formula set forth in Section 9359.1 to a salary of five hundred dollars (\$500), and any increase in salary above such amount shall, for such purpose, be disregarded.

(c) If a retired member who is otherwise subject to subdivision (b) is, while serving as a member of a public board or commission, entitled to receive for that service per diem compensation and expenses or compensation and expenses, he or she may, notwithstanding any other provision of the law, waive the compensation. If the compensation is waived, the member shall not be subject to subdivision (b). Nothing in this section shall be construed as requiring the waiver of expenses or per diem compensation which is in lieu of expenses.

(Amended by Stats. 1985, Ch. 753, Sec. 1. Effective September 18, 1985.)

9359.13. Notwithstanding any contrary provision of Section 9359.1 the retirement allowance of a member who is an elective officer of the state whose office is provided for by the Constitution, other than a judge or a Member of the Senate or Assembly, first elected to any such office after the effective date of this section and any allowance payable to a survivor of such member on death before or after retirement shall not be based on compensation in excess of the highest compensation received by the member as an incumbent of such office. Allowances payable to such members or survivors shall be adjusted under Section 9360.10 rather than 9360.9.

(Added by Stats. 1971, Ch. 1277.)

9359.15. Notwithstanding any other provision of this chapter, no retirement allowance or optional settlement in lieu thereof under this chapter shall be paid to or in respect to any person for time during which he or she holds office as a legislator. If a retired legislator reenters this system after his or her retirement, his or her retirement allowance or optional settlement in lieu thereof shall be discontinued, and his or her individual account shall be credited with the amount of his or her accumulated contributions at the time of his or her retirement, and he or she shall be entitled to receive credit for service prior to his or her retirement in the same manner as if he or she had never been retired.

(Amended by Stats. 2002, Ch. 664, Sec. 91.6. Effective January 1, 2003.)

9359.16. Notwithstanding the provisions of Section 9359, a member of this system, other than a legislative statutory officer, who is under age 60 and who is credited with 15 or more, but less than 20 years of service shall be retired upon his or her written application therefor to the Board of Administration, and thereafter shall receive for life the retirement allowance provided by this section. The allowance shall be equal to the retirement allowance that he or she would receive for that service upon retirement at age 60 reduced by 2 percent for each year by which the member's age at the time of retirement is below age 60.

(Amended by Stats. 2002, Ch. 664, Sec. 91.7. Effective January 1, 2003.)

9359.17. Notwithstanding the provisions of Section 9359, a legislative statutory officer who has attained the age of 55 shall be retired upon his or her written application therefor to the Board of Administration, and shall thereafter receive for life the retirement allowance provided by Section 9359.10.

(Amended by Stats. 2002, Ch. 664, Sec. 91.8. Effective January 1, 2003.)

9359.2. A retirement allowance granted by this chapter is payable in equal monthly installments but a smaller pro rata amount may be paid for part of a month when the period of payment begins after the first or ends before the last day of the month.

(Added by Stats. 1947, Ch. 879.)

9359.3. The right of a person to any benefit or other right under this chapter and the money in the Legislators' Retirement Fund are not subject to execution or any other process whatsoever except to the extent permitted by Section 704.110 of the Code of Civil Procedure, and are unassignable except as specifically provided in this chapter.

(Amended by Stats. 1982, Ch. 497, Sec. 100. Operative July 1, 1983, by Sec. 185 of Ch. 497.)

9359.4. A member may at any time designate a beneficiary to receive those benefits as may be payable to his or her beneficiary or estate under this chapter, by a writing filed with the board. To be eligible to be so designated a person shall have an insurable interest in the life of the member.

(Amended by Stats. 2002, Ch. 664, Sec. 91.9. Effective January 1, 2003.)

9359.5. The designation of a beneficiary under this system, other than designations under Optional Settlements 2, 3 and 4, may be revoked at the pleasure of the person who made it and a different beneficiary designated by a writing filed with the board.

(Added by Stats. 1947, Ch. 879.)

9359.6. The designation of a beneficiary by a member is not affected by termination of nor a break in his membership.

(Added by Stats. 1947, Ch. 879.)

9359.7. If any person entitled to a benefit of not more than five hundred dollars (\$500) from this system is a minor who has no guardian of his estate, the board may pay it to the person entitled to the custody of the minor to hold for the minor, if the person files with the board his acknowledged and verified statement that the total estate of the minor does not exceed one thousand dollars (\$1,000) in value. Payment so made is a full discharge of the board and this system. The person shall account to the minor for the money when the minor reaches the age of majority.

(Added by Stats. 1947, Ch. 879.)

9359.8. Upon the death of any member before retirement, the member's accumulated contributions shall be paid to the member's beneficiary, if he or she has designated one, and if not, to his or her estate. There shall also be paid to his or her beneficiary or estate an amount equal to one-twelfth of the annual compensation of the office last held by the member as a legislator during the 12 months immediately preceding his or her death or that would have been applicable under Section 9359.1, whichever is greater, multiplied by the number of completed years of service and prior service for which the member is entitled to elect to receive credit. The benefits provided by this section are in addition to any benefits provided by Division 4 (commencing with Section 3201) of the Labor Code.

The benefit accorded by this section is not payable if the deceased member's spouse survives him or her and is entitled to receive an allowance for life pursuant to this chapter.

(Amended by Stats. 1985, Ch. 106, Sec. 46.)

9359.83. Retired members of the system, and beneficiaries, who are entitled to receive allowances under the provisions of this chapter, may authorize deductions to be made from their retirement allowance payments, in accordance with regulations established by the board, for the payment of group insurance premiums and for dues or charges of a nonprofit membership corporation for the purpose of defraying the cost of medical services or hospital care, or both, under any plan approved by the Director of Finance. Those persons may also authorize deductions to be made from their retirement allowance payments, in accordance with regulations established by the board, for the payment of contributions for any health benefit plan coverage for which they may be eligible under the provisions of Chapter 1 (commencing with Section 22750) of Part 5 of Division 5 of Title 2 of this code.

(Amended by Stats. 2004, Ch. 69, Sec. 9. Effective June 24, 2004.)

9359.85. Upon the death of any person, after retirement and while receiving a retirement allowance from this system, there shall be paid to his or her estate or to those beneficiaries as he or she shall nominate the sum of six hundred dollars (\$600).

(Amended by Stats. 2002, Ch. 664, Sec. 92. Effective January 1, 2003.)

9359.9. (a) If a beneficiary is not designated, or if the estate is the beneficiary and the estate would not be probated if no amount were due from this system, all of the amount due by reason of the death of a member or retired member, including retirement allowances accrued but not received prior to death, shall be paid directly without probate to the surviving next of kin of the deceased, or the guardians of such survivors' estates, share and share alike.

(b) Such payment shall be made in the same order in which the following groups are listed:

- (1) Spouse.
- (2) Children.
- (3) Father and mother.
- (4) Grandchildren.
- (5) Brothers and sisters.
- (6) Nieces and nephews.

(Amended by Stats. 2016, Ch. 50, Sec. 45. (SB 1005) Effective January 1, 2017.)

9359.95. In addition to any other benefits provided for in this chapter, upon the death, on or after January 1, 1959, and before retirement, of any member who, at the time of his or her death was a legislator, there shall be paid to his or her beneficiary, if he or she has designated one, and if not, to his or her estate, an amount equal to the annual compensation payable to him or her during the 12 months immediately preceding his or her death.

(Amended by Stats. 2002, Ch. 664, Sec. 92.1. Effective January 1, 2003.)

9360. No payment shall be made to persons included in any group if at the date of payment there are living persons in any of the groups preceding it, as listed. Payment to the persons in any group, upon receipt from them of an affidavit upon a form supplied by the board, that there are no living individuals in the groups preceding it and that the estate of the deceased will not be probated, is in full discharge of the board and system on account of the death.

(Added by Stats. 1947, Ch. 879.)

9360.1. If the estate of the deceased member is his beneficiary, or if no beneficiary has been designated by him, or if the designated beneficiary cannot be found by the board, it may in its discretion pay to the funeral director who conducted the funeral, or to any person or organization that has paid the funeral director from his or the organization's funds, all or a portion of any amount payable under this system, but not more than expenses of the funeral or the portion of such expenses paid by the person or organization, as evidenced by the sworn itemized statement of the funeral director and by such other documents as the board may require. Payment so made is a full discharge of the board and system for the amount so paid.

(Added by Stats. 1947, Ch. 879.)

9360.2. As used in this chapter, "disability" and "incapacity for performance of duty" as a basis of retirement, mean disability of permanent or extended and uncertain duration, as determined by the board on the basis of competent medical opinion.

(Added by Stats. 1949, Ch. 1109.)

9360.3. Application to the board for retirement of a member for disability may be made by the member or any person in his or her behalf. Upon receipt of the application and determination of the board that the applicant is incapacitated for the performance of duty, the board shall retire the member for disability. The application shall be made only during one or more of the three following periods:

(a) While the person is a member of this system.

(b) During any time as he or she has allowed his or her accumulated contributions to remain in the system pursuant to Section 9355.2.

(c) If the person has not allowed his or her accumulated contributions to remain in the system pursuant to Section 9355.2 and if he or she was physically or mentally incapacitated to perform his or her duties on the date of discontinuance of his or her service as a legislator and the incapacity continued to the time of application, while he or she is physically or mentally incapacitated.

(Amended by Stats. 2002, Ch. 664, Sec. 92.2. Effective January 1, 2003.)

9360.4. The board may require any recipient of a disability allowance under the minimum age for voluntary retirement to undergo medical examination. The examination shall be made by a physician or surgeon, appointed by the board, at the place of residence of the recipient or other place mutually agreed upon. Upon the basis of the examination, the board shall determine whether the physical or mental disability still exists. If the board determines that the recipient is not so incapacitated, his or her disability allowance shall be canceled forthwith.

(Amended by Stats. 2002, Ch. 664, Sec. 92.3. Effective January 1, 2003.)

9360.5. If any recipient of a disability retirement allowance under the minimum age for voluntary retirement refuses to submit to medical examination, the retirement allowance shall be discontinued until he or she agrees to submit to the examination. If the refusal continues for one year, disability retirement allowance shall be discontinued.

(Amended by Stats. 2002, Ch. 664, Sec. 92.4. Effective January 1, 2003.)

9360.6. The disability allowance for other than legislative statutory officers is the same as the retirement allowance that would be payable to the member had he or she retired under this chapter for reasons other than disability, and shall be paid regardless of the age of the member at the time of his or her retirement for disability. The disability retirement allowance for legislative statutory officers is the same as the retirement allowance provided in Section 9359.10, and shall be paid regardless of the age of the member at the time of his or her retirement for disability.

(Amended by Stats. 2002, Ch. 664, Sec. 92.5. Effective January 1, 2003.)

9360.7. (a) Any Member of the Senate or Assembly who, after the effective date of this section, retires for service or disability shall receive the retirement allowance provided by this chapter unmodified by any optional settlement elected pursuant to Article 7 (commencing with Section 9361) of this chapter.

(b) The surviving spouse of a member described in subdivision (a) who dies after retirement may elect to receive an allowance under this section. Any surviving spouse making that election shall receive an allowance equal to one-half of the retirement allowance, unmodified by any optional settlement that would be payable to the member were he or she living and retired under this chapter.

(c) The surviving spouse of a member who is a Member of the Senate or Assembly and who dies before retirement but after becoming eligible for retirement may elect to receive an allowance under this section. Any surviving spouse making that election shall receive an allowance equal to one-half of the amount of the retirement allowance, unmodified by any optional settlement, that would be payable to the member were he or she living and retired under this chapter. If there is no surviving spouse, or if the spouse dies or remarries, then the allowance payable under this paragraph shall be payable to the children of the member under the same conditions and qualifications as provided for the allowances of children under Article 8 (commencing with Section 9371) of this chapter.

(d) The election provided for in this section shall be made by a writing filed with the board within 60 days after the death of the member.

(e) The allowance to a surviving spouse provided by this section is payable commencing upon the death of the member and continuing until the death or remarriage of the surviving spouse. If pursuant to this section, an allowance is paid to a surviving spouse, no payment shall be made pursuant to Section 9359.8 or pursuant to Article 7 (commencing with Section 9361) of this chapter.

(f) The provisions of this section apply to the surviving spouse of any Member of the Senate or Assembly who was credited with 20 or more years of service at the time of his or her retirement and regardless of the date of retirement.

(Amended by Stats. 2002, Ch. 664, Sec. 92.6. Effective January 1, 2003.)

9360.9. Notwithstanding any other provisions of this chapter, the provisions of this section shall be applicable to all allowances granted by this chapter commencing with each installment paid or payable on or after January 1, 1964, with respect to Members of the Senate or the Assembly not having service in such office during or after the term commencing in 1967 and members who are elective officers of the state whose offices are provided by the Constitution and who were first elected to any such office prior to January 1, 1966.

On or before January 1, 1964, the board shall adjust the amount of the allowances payable during the 1964 calendar year to reflect any increase in cost of living occurring between the 1963 calendar year and the 1955 calendar year, inclusive, and any increase resulting from such adjustment shall be payable commencing with each installment of allowances paid or payable on or after January 1, 1964. On or before January 15, 1965, and, on or before January 15 of each year thereafter, the amount of the allowances provided by this chapter shall be adjusted by the board to reflect any increase in cost of living occurring after January 1 of the immediately preceding calendar year. Effective January 1, 1985, the United States city average of the "Consumer Price Index for all Urban Consumers," as published by the United States Bureau of Statistics, shall be used as the basis for determining the changes in the cost of living. For the period from January 1, 1978, through December 31, 1984, the average of the separate indices of the "Consumer Price Index for All Urban Consumers" for the Los Angeles-Long Beach-Anaheim area, and the San Francisco-Oakland area, as published by the United States Bureau of Labor Statistics, shall be used as the basis for determining the changes in the cost of living. For the period prior to January 1, 1978, the average of the separate indices for the Los Angeles-Long Beach area and the San Francisco-Oakland area, as published by the United States Bureau of Labor Statistics, shall be used as the basis for determining the changes in the cost of living. The cost-of-living increase shall equal or exceed 1 percent before any adjustment is made in the allowance. The calendar year 1954 shall be used as the base year in computing any annual adjustment. The annual adjustment made on or before January 15, 1965 and made on or before January 15 of each calendar year thereafter shall correspond to the average annual change in the calendar year immediately preceding the year during which the adjustment shall be effective. The adjustment made on or before January 1, 1964, shall correspond to the total of the average annual changes in each calendar year from the 1955 calendar year to the 1963 calendar year, inclusive.

The adjustment provided by this section shall be made only if it operates to effect an increase over the allowance payable for the calendar year immediately preceding.

(Amended by Stats. 1984, Ch. 110, Sec. 1. Effective May 3, 1984.)

9360.10. On or before January 15, 1968, and on or before January 15 of each year thereafter, the amount of any allowances provided by this chapter and not subject to Section 9360.9 shall be adjusted by the board to reflect any increase in cost of living occurring after January 1 of the immediately preceding fiscal year. Effective January 1, 1985, the United States city average of the "Consumer Price Index for all Urban Consumers," as published by the United States Bureau of Statistics, shall be used as the basis for determining the changes in the cost of living. For the period from January 1, 1978, through December 31, 1984, the average of

the separate indices of the "Consumer Price Index for All Urban Consumers" for the Los Angeles-Long Beach-Anaheim area and the San Francisco-Oakland area, as published by the United States Bureau of Labor Statistics, shall be used as the basis for determining the changes in the cost of living. For the period prior to January 1, 1978, the average of the separate indices for the Los Angeles-Long Beach area and the San Francisco-Oakland area, as published by the United States Bureau of Labor Statistics, shall be used as the basis for determining the changes in the cost of living. The cost-of-living increase shall equal or exceed 1 percent before any adjustment is made in the allowance. The adjustment provided by this section shall be made only if it operates to effect an increase over the allowance payable for the calendar year immediately preceding.

(Amended by Stats. 1984, Ch. 110, Sec. 2. Effective May 3, 1984.)

9360.11. Notwithstanding any other provisions of this chapter, any member who would have been eligible to retire under Section 9359.01 had it not been repealed because he or she did not return to office or who would have been eligible to retire under that section had it not been repealed and had he or she chosen not to run or not been returned to office following the reapportionment of his or her district is deemed eligible for retirement for purposes of Sections 9360.7 and 9361.1 at any time thereafter.

(Amended by Stats. 2002, Ch. 664, Sec. 92.7. Effective January 1, 2003.)