

**21.360 Election to participate -- Delayed election. (Declared void -- See LRC Note Below)**

- (1) (a) Each Judge of the District Court in office on July 1, 1978, may within thirty (30) days after that date, and any judge or justice of any court entitled to be a member thereafter taking office may within thirty (30) days after taking office, elect to make monthly contributions to the retirement system in an amount equal to:
    1. Five percent (5%) of his or her monthly official salary, if the judge or justice became a member of the Kentucky Judicial Retirement Plan prior to September 1, 2008;
    2. Six percent (6%) of his or her monthly official salary, if the judge or justice became a member of the Kentucky Judicial Retirement Plan on or after September 1, 2008, but prior to January 1, 2014; or
    3. Six percent (6%) of his or her monthly official salary, if the judge or justice who becomes a member of the Kentucky Judicial Retirement Plan on or after January 1, 2014, which shall be used to fund benefits as follows:
      - a. Five percent (5%) of the monthly official salary shall be used to provide funding for benefits provided under KRS 21.402; and
      - b. One percent (1%) of the monthly official salary to be used exclusively to help fund retiree health benefits as provided by KRS 21.427 and which shall not be refunded to the member if the member withdraws his or her accumulated account balance as provided by KRS 21.460. The deducted amounts under this subdivision shall be credited to an account established pursuant to 26 U.S.C. sec. 401(h), within the fund established by KRS 21.347.
  - (b) The election shall be effective to establish membership in the system as of July 1, 1978, or as of the date the judge or justice took office, as the case may be. The election shall be addressed to and filed with the secretary of the Finance and Administration Cabinet, and shall constitute an authorization by the member, to the secretary, to thereafter cause to be deducted from the member's official salary, each month, the amount required by paragraph (a) of this subsection, as a voluntary contribution by the member towards the funding of the retirement system. For a member who began contributing to the Judicial Retirement Plan prior to January 1, 2014, the contribution shall continue until the judge or justice is vested in a service retirement allowance equal to one hundred percent (100%) of final compensation. Thereafter employee contributions shall be discontinued but continued service and retirement benefits shall not be affected thereby.
- (2) A judge or justice entitled to elect membership in the retirement system who failed to elect membership within thirty (30) days after taking office in 1980 or who elected membership in the Kentucky Employees Retirement System may elect membership not later than August 31, 2005. An election, upon being made pursuant

to this section, shall operate to create an inviolable contract between the member entitled to elect membership under this subsection and the Commonwealth, guaranteeing to and vesting in the member the rights and benefits provided for under the terms and conditions of KRS 21.350 to 21.510, except that the General Assembly reserves the right to amend, reduce, or suspend any legislative changes to the provisions of KRS 21.345 to 21.580 that become effective on or after July 1, 2018.

- (3) (a) When any judge makes a delayed election of membership in the Judicial Retirement Plan under subsection (2) of this section, his active membership in the Kentucky Employees Retirement System shall terminate, as of the date his membership in the Judicial Retirement Plan becomes effective, and any credit in the Kentucky Employees Retirement System, earned for service as a judge, which he then has or which he subsequently regains while being an active member of the Judicial Retirement Plan, shall be transferred to and counted as service credit in the Judicial Retirement Plan, and shall no longer constitute credit in the Kentucky Employees Retirement System, except for the purpose of validating any other credit in that system, if the member pays the difference, if any, between the amount transferred from the Kentucky Employees Retirement System and the actuarial value of the transferred service.
  - (b) Any credit he then has in the Kentucky Employees Retirement System, earned for service in any capacity other than a judge, shall not be affected. Notwithstanding any provisions of KRS 61.680 to the contrary, final compensation used to determine benefits for any service credit remaining in the Kentucky Employees Retirement System shall be based on the highest years of compensation as a judge whether the years occur before or after the judge elects membership in the Judicial Retirement Plan.
  - (c) No person may attain credit in more than one (1) of the retirement plans or systems mentioned in this section for the same period of service. When credit is transferred from the Kentucky Employees Retirement System to the Judicial Retirement Plan, the Kentucky Employees Retirement System shall transfer to the Judicial Retirement Fund an amount equal to the employee's and employer's contributions attributable to that credit, together with interest on the contributions from the date made to the date of transfer at the actuarially-assumed interest rate of the Kentucky Employees Retirement System in effect at the time the contributions were made, compounded annually at that same interest rate.
- (4) Membership and benefit rights for judges and justices (other than Judges of the District Court), and for the commissioners and administrative director, who took office prior to July 1, 1978, shall be dependent upon valid elections having been made under this section (and KRS 21.355 and 21.365) prior to the 1978 amendment to this section. The terms of such elections, including the contribution rate, shall continue to govern for the duration of the member's service.
  - (5) When any Judge of the District Court in office on July 1, 1978, elects membership

in the Judicial Retirement Plan in accordance with this section, his membership in the Kentucky Employees Retirement System shall terminate as of July 1, 1978, and any credit in that system he earned for service as a Judge of the District Court shall be nullified; provided that the effect of such service to validate any other service credit in that system shall not be nullified.

- (6) The state shall, solely for the purpose of compliance with Section 414(h) of the United States Internal Revenue Code, pick up the employee contributions required by this section for all compensation earned after August 1, 1982, and the contributions so picked up shall be treated as employer contributions in determining tax treatment under the United States Internal Revenue Code and KRS 141.010. The picked-up employee contribution shall satisfy all obligations to the retirement system satisfied prior to August 1, 1982, by the employee contribution, and the picked-up employee contribution shall be in lieu of an employee contribution. The state shall pay these picked-up employee contributions from the same source of funds which is used to pay earnings to the employee. The employee shall have no option to receive the contributed amounts directly instead of having them paid by the employer to the system. Employee contributions picked up after August 1, 1982, shall be treated for all purposes of KRS 21.345 to 21.570 in the same manner and to the same extent as employee contributions made prior to August 1, 1982.
- (7) An election once made under this section, either to participate or not to participate in the Judicial Retirement Plan, shall be considered to apply, to all future service in any office covered by the plan, except as provided by KRS 21.374 and 21.385(3), whether such service is in the same or a different office, and whether or not it is continuous.

**Effective:** July 14, 2018

**History:** Amended 2018 Ky. Acts ch. 107, sec. 5, effective July 14, 2018; ch. 171, sec. 65, effective April 14, 2018; and ch. 207, sec. 65, effective April 27, 2018. -- Amended 2013 Ky. Acts ch. 120, sec. 20, effective July 1, 2013. -- Amended 2008 (1st Extra. Sess.) Ky. Acts ch. 1, sec. 5, effective June 27, 2008. -- Amended 2005 Ky. Acts ch. 86, sec. 6, effective June 20, 2005. -- Amended 1994 Ky. Acts ch. 266, sec. 6, effective July 15, 1994. -- Amended 1990 Ky. Acts ch. 360, sec. 1, effective July 13, 1990; and ch. 476, Pt. VII D, sec. 642, effective April 11, 1990. -- Amended 1984 Ky. Acts ch. 111, sec. 25, effective July 13, 1984. -- Amended 1982 Ky. Acts ch. 166, sec. 5, effective July 15, 1982; and ch. 458, sec. 9, effective April 15, 1982. -- Amended 1978 Ky. Acts ch. 193, sec. 3, effective July 1, 1978. -- Amended 1974 Ky. Acts ch. 74, Art. II, sec. 9(2). -- Created 1960 Ky. Acts ch. 84, Art. II, sec. 2.

**Legislative research commission Note** (7/14/2018). This statute was amended by 2018 Ky. Acts chs. 107, 171, and 207, which do not appear to be in conflict and have been codified together.

**Legislative Research Commission Note** (12/13/2018). On December 13, 2018, the Kentucky Supreme Court ruled that the passage of 2018 SB 151 (2018 Ky. Acts ch. 107), did not comply with the three-readings rule of Kentucky Constitution Section 46 and that the legislation is, therefore, constitutionally invalid and declared void. That ruling applies to changes made to this statute in that Act.