

the maximum monthly benefit from \$200 to \$400 shall not be effective retroactively.

(d) (e) If the member shall die under circumstances which entitle his the surviving spouse and dependent children to receive benefits under the workers' compensation law, the amounts so received by them shall not be deducted from the benefits payable under this section. ~~The provisions of this clause are effective retroactively to June 30, 1964.~~

(e) (f) In the event any former member who had separated from service prior to having completed ~~20~~ ten years of service, except former members permanently disabled in performance of duty, and was not employed by the state in a capacity entitling ~~him~~ the former member to accumulate allowable service credit at the time of his death, his widow ~~and the surviving spouse, or if none,~~ the children or heirs shall be entitled to receive any funds ~~he~~ the former member may have left on deposit in the highway patrolmen's retirement fund, but shall receive no further benefits under this chapter. ~~The surviving spouse of such deceased former member who had credit for ten or more years of allowable service, but excluding the spouse of a former member receiving a disability benefit under the provisions of section 352B.10, clause (3) based on less than 20 years of service, shall be entitled to receive the 100 percent joint and survivor annuity at such time as the deceased member would have reached his or her 55th birthdate, provided he or she has not remarried prior to that date.~~

Sec. 3. ~~Section 1 shall be effective July 1, 1978. Section 2 shall be effective the day following final enactment and shall be applicable to former members on deferred status or receiving a disability benefit on the effective date of section 2.~~

Approved March 28, 1978.

CHAPTER 647-H.F.No.2024

An act relating to courts; disqualification of a presiding judge without a showing of prejudice; amending Minnesota Statutes 1976, Sections 487.40, Subdivision 2; and 542.16.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 1976, Section 487.40, Subdivision 2, is amended to read:

Subd. 2. **AFFIDAVIT OF PREJUDICE.** Any party or his attorney, to a cause pending in a court, ~~on or before ten days prior to the first day of a general, or five days prior to a special, term thereof, or, in any district having two or more judges, within one day after it is ascertained which judge is to preside at the trial or hearing thereof, or at the hearing of any motion, order to show cause, or argument on demurrer, may make and file with the clerk of the court in which the action is pending and serve on the opposite party an affidavit stating that, on account of prejudice or bias on the part of such judge, he has good reason to believe, and does believe, that he cannot have a fair trial or hearing thereof, a notice to remove and thereupon such judge shall forthwith, without any further~~

Changes or additions indicated by underline deletions by ~~strikeout~~

act or proof, secure some other judge of the same or another district to preside at the trial of ~~such the~~ cause or the hearing of the motion, demurrer, or order to show cause, and ~~shall continue~~ the cause shall be continued on the calendar, until ~~such another~~ judge can be present. In criminal actions ~~such the~~ affidavit shall be made and filed with ~~such the~~ clerk by the defendant, or his attorney, not less than two days before the expiration of the time allowed him by law to prepare for trial and in any of ~~such the~~ cases ~~such the~~ presiding judge shall be incapacitated to try ~~such the~~ cause. In criminal cases, ~~such the~~ judge for the purpose of securing a speedy trial, may in his discretion change the place of trial to another county.

After a litigant has once disqualified a presiding judge as a matter of right under this subdivision, he may disqualify the substitute judge, but only by making an affirmative showing of prejudice. A showing that the judge might be excluded for bias from acting as a juror in the matter constitutes an affirmative showing of prejudice.

Sec. 2. Minnesota Statutes 1976, Section 542.16, is amended to read:

542.16 NOTICE TO REMOVE. Subdivision 1. INITIAL DISQUALIFICATION.

Any party, or his attorney, to a cause pending in a district court, ~~on or before ten days prior to the first day of a general, or five days prior to a special, term thereof, or, in any district having two or more judges,~~ within one day after it is ascertained which judge is to preside at the trial or hearing thereof, or at the hearing of any motion, order to show cause, or argument on demurrer, may make and file with the clerk of the court in which the action is pending and serve on the opposite party ~~an affidavit stating that, on account of prejudice or bias on the part of such judge, he has good reason to believe, and does believe, that he cannot have a fair trial or hearing thereof a notice to remove,~~ and thereupon ~~such judge shall forthwith,~~ without any further act or proof, secure some other judge of the same or another district to preside at the trial of ~~such the~~ cause or the hearing of the motion, demurrer, or order to show cause, and ~~the cause shall continue the cause be continued~~ on the calendar, until ~~such another~~ judge can be present. In criminal actions ~~such affidavit the notice to remove~~ shall be made and filed with ~~such the~~ clerk by the defendant, or his attorney, not less than two days before the expiration of the time allowed him by law to prepare for trial and in any of ~~such those~~ cases ~~such the~~ presiding judge shall be incapacitated to try ~~such the~~ cause. In criminal cases, ~~such the~~ judge, for the purpose of securing a speedy trial, may in his discretion change the place of trial to another county.

Subd. 2. SUBSEQUENT DISQUALIFICATIONS. After a litigant has once disqualified a presiding judge as a matter of right under subdivision 1, he may disqualify the substitute judge, but only by making an affirmative showing of prejudice. A showing that the judge might be excluded for bias from acting as a juror in the matter constitutes an affirmative showing of prejudice.

Approved March 28, 1978.

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